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SOURCE: 47 FR 2092, Jan. 14, 1982, unless otherwise noted.

Subpart A—General Policies and Instructions

§ 700.1 Purpose.

The purpose of this part is to implement provisions of the Act of December 22, 1974 (Pub. L. 93-531, 88 Stat. 1712 as amended by Pub. L. 96-305, 94 Stat. 929), hereinafter referred to as the Act, in accordance with the following objectives—

(a) To insure that persons displaced as a result of the Act are treated fairly, consistently, and equitably so that these persons will not suffer the disproportionate adverse, social, economic, cultural and other impacts of relocation.

(b) To set forth the regulations and procedures by which the Commission

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shall operate; and implement the provisions of the Act.

(c) To establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894, 42 U.S.C. 4601 et. seq., Pub. L. 91-646), hereinafter referred to as the Uniform Act.

(d) To insure that owners of habitations and other improvements to be acquired pursuant to the Act are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation, relieve congestion in the courts and to promote public confidence in the Commission's relocation program.

(e) To facilitate development of a relocation plan according to the Act and carry out the directed relocation as promptly and fairly as possible, with a minimum of hardship and discomfort to the relocation, in accordance with the Act.

§ 700.3 Assurances with respect to acquisition and displacement.

The Commission will not approve any programs or projects which may result in the acquisition of habitations and/or improvements, or in the displacement of any person, until such time as written assurances are submitted to the Commission that such projects or programs are in accordance with the Act. It will—

(a) Assure that, within a reasonable period of time prior to displacement, adequate, decent, safe and sanitary replacement dwellings (defined at § 700.55) will be available to all certified eligible heads of households.

(b) Carry out relocation services in a manner that will promote maximum quality in housing.

(c) Inform affected persons of their rights under the policies and procedures set forth under the regulations in this part.

§ 700.5 Supersedeure of regulations.

These regulations supersede the regulations formerly appearing in this part. However, any acquisition of property or displacement of a person occurring prior to the effective date of these reg-

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ulations shall continue to be governed by the regulations at 25 CFR part 700 in effect at the time of the acquisition or displacement.

§ 700.11 Manner of notice.

Each notice which the Commission is required to provide under these regulations shall be personally served, receipt documented, or sent by certified or registered first-class mail, return receipt requested. Each notice shall be written in plain understandable language. Recipients who notify the Commission that they are unable to read and understand the notice will be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 700.13 Waiver of regulations.

(a) Any time limit specified for the filing of a claim or an appeal under the regulations in this part may, on a case by case basis, be extended by the Commission.

(b) The Commission may waive any requirement of these regulations in this part if such requirement is not required by law and if the Commission finds such waiver or exception to be in the best interest of individual Indian applicants, the Commission, and the United States. Any request for a Commission waiver shall be submitted in writing to the Commission and shall be justified on a case by case basis.

§ 700.15 Waiver of rights by owner.

Nothing in these regulations shall prevent a fully informed applicant from voluntarily waiving any of his/her rights under the regulations in this part. A waiver of rights shall in no way constitute an exemption from the requirement to relocate pursuant to the Act.

DEFINITIONS

§ 700.31 Applicability of definitions.

Except where otherwise noted, the definitions appearing in this subpart A apply to the regulations in this part.

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§ 700.33 Act (The Act).

(a) *The Act*. The Act is Pub. L. 93-531, (88 Stat. 1712, 25 U.S.C. 640d.) as amended by Pub. L. 96-305 (94 Stat. 929).

§ 700.35 Applicant.

A person who applies for relocation assistance benefits and agrees to relocate as required by the Act.

§ 700.37 Application for relocation assistance benefits and agreement to move.

The application for relocation assistance benefits and agreement to move is Commission Form #69-R0001, completion of which is used for establishing the date upon which a person shall be deemed to have a contract with the Commission to relocate pursuant to section 14(b) of the Act.

§ 700.39 Appraisal.

The appraisal is an estimate of the fair market value which is placed on the habitation and other improvements owned by a relocatee.

§ 700.41 Appraiser.

An appraiser is a person appointed or hired by the Commission to make an appraisal of the habitation and other improvements on the land owned by the relocatees. All compensation for the appraiser shall be paid by the Commission.

§ 700.43 Assistance payment.

An assistance payment is the additional payment made to the certified eligible head of household pursuant to section 14(b) of the Act. This term is synonymous with "incentive bonus".

§ 700.45 Business.

The term business means any lawful activity, except a nonprofit organization or a farm operation, that is—

(a) Conducted primarily for the purchase, sale, lease and or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(b) Conducted primarily for the sale of services to the public; or

(c) Solely for the purpose of subpart D of this part, conducted primarily for

outdoor advertising display purposes, when the display(s) must be moved as a result of the Act.

§ 700.47 Commission.

The Navajo and Hopi Indian Relocation Commission is that entity established pursuant to 25 U.S.C. 640d-11 (section 12(a) of the Act).

§ 700.49 Certified eligible head of household.

A certified eligible head of household is a person who has received notice from the Commission that he/she has been certified as eligible to receive certain relocation assistance benefits.

§ 700.51 Custodial parent.

A custodial parent is a person who has the immediate personal care, charge, and control of a minor child who resides in his/her household, or a person who fills the parental role but who is not necessarily blood-related.

§ 700.53 Dwelling, replacement.

The term replacement dwelling means a dwelling selected by the head of a household as a replacement dwelling that meets the criteria of this section. A replacement dwelling is a dwelling that:

(a) Is decent, safe, and sanitary as described in § 700.55.

(b) May include existing dwellings for resale, new construction, modular homes, mobile homes, mutual self-help housing or other federally assisted housing programs.

(c) Is in an area not subjected to unreasonable adverse environmental conditions from either natural or man-made sources and in an area not generally less desirable than that of the acquired dwelling with respect to public utilities, public and commercial facilities, and schools.

(d) Is available at a purchase price within the ability-to-pay of the displaced person. A replacement dwelling shall be considered within the ability-to-pay of the displaced person if, after he receives a replacement housing payment and any available housing assistance payments, his new monthly housing cost (defined at § 700.81) for the replacement dwelling does not exceed twenty-five percent (25%) of the

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monthly gross income of all adult members of the household, including supplemental income payments received from public agencies. If the person's monthly income pattern is irregular, the Commission shall base its determination of average gross monthly income on the period of time, actual and/or projected, that most fairly and equitably represents the person's ability-to-pay.

(e) Is actually available to the displaced person on the private market, other federally sponsored housing projects, tribal-sponsored housing projects and/or Commission-sponsored housing projects.

§ 700.55 Decent, safe, and sanitary dwelling.

(a) *General.* The term decent, safe, and sanitary dwelling means a dwelling which—

(1) Meets applicable federal, state and local housing and occupancy codes; including but not limited to the Uniform Building Code, National Electrical Code, ICBO Plumbing Code, the Uniform Mechanical Code, HUD Minimum Property Standards, and HUD Mobile Home Construction and Safety Standards (24 CFR part 4080).

(2) Is structurally sound, clean, weathertight and in good repair and has adequate living space and number of rooms.

(3) Has an adequate and safe electrical wiring system for lighting and other electrical services where economically feasible.

(4) Meets the requirements of the HUD lead-based paint regulations (24 CFR part 42) issued under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.);

(5) In the case of a physically handicapped person, is free of any architectural barriers. To the extent that standards prescribed by the American National Standards Institute, Inc., in publication ANSI A117.1-1961 (R 1971), are pertinent, this provision will be considered met if it meets those standards;

(6) Has heating as required by climatic conditions;

(7) Has habitable sleeping area that is adequately ventilated and sufficient to accommodate the occupants;

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(8) Has a separate well-lighted and ventilated bathroom, affording privacy to the user, that contains a sink and bathtub or shower stall, properly connected to hot and cold water, and a flush toilet, all in good working order and properly connected to a sewage drainage system; and

(9) In the case of new construction or modular housing, complies with the energy performance standards for new buildings set forth by the U.S. Department of Energy.

(10) The Commission may waive paragraph (a)(3) or (8) of this section on a case-by-case basis if it is determined that it is in the best interest of the individual relocatee to do so.

§ 700.57 Dependent.

A dependent is a person who either derives more than one-half of his/her support from another or is under the custody, control and care of another. In instances where there are conflicting claims for the dependent status of a person in more than one household, the household of the person having custody, control and care shall be determined to be the household wherein the person is a dependent.

§ 700.59 Displaced person.

Displaced person means a member of the Hopi Tribe residing within the area partitioned to the Navajo Tribe or a member of the Navajo Tribe residing within the area partitioned to the Hopi Tribe who must be relocated pursuant to the Act. This term is synonymous with the term "relocatee".

§ 700.61 Fair market value.

Fair market value shall mean the value placed on the habitation and improvements owned by each head of household as determined pursuant to §§ 700.117 through 700.121.

§ 700.65 Farm operation.

Farm operation means any activity conducted for the production of one or more agricultural products or commodities including livestock, crops and timber for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially

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to the operator's support as determined in § 700.171(b)(3).

§ 700.67 Habitation.

The term habitation means the dwelling(s) of each household required to relocate under the term of the Act.

§ 700.69 Head of household.

(a) *Household.* A household is:

(1) A group of two or more persons living together at a specific location who form a unit of permanent and domestic character.

(2) A single person who at the time his/her residence on land partitioned to the Tribe of which he/she is not a member actually maintained and supported him/herself or was legally married and is now legally divorced.

(b) *Head of household.* The head of household is that individual who speaks on behalf of the members of the household and who is designated by the household members to act as such.

(c) In order to qualify as a head of household, the individual must have been a head of household as of the time he/she moved from the land partitioned to a tribe of which they were not a member.

[49 FR 22278, May 29, 1984]

§ 700.71 Improvements.

Improvements are structures and attached fixtures to the land owned by a member of a household required to relocate under the terms of the Act, in addition to the habitation which improvements cannot readily be moved without substantial damage, or whose movement would require unreasonable cost.

§ 700.77 Livestock.

The term livestock shall mean all domesticated animals of every type owned by the displaced person.

§ 700.79 Marriage.

Marriage is a legally recorded marriage or a traditional commitment between a man or woman recognized by the law of the Hopi Tribe or the Navajo Tribe.

§ 700.81 Monthly housing cost.

(a) *General.* The term monthly housing cost for a replacement dwelling purchased by a certified eligible head of household is the average monthly cost for all mortgage payments, real property taxes, reasonable utility charges, and insurance.

(b) *Computation of monthly housing cost for replacement dwelling.* A person's monthly housing cost for a replacement dwelling shall be a projected amount that includes one-twelfth of the estimated reasonable annual cost for utility charges.

§ 700.83 Nonprofit organization.

The term nonprofit organization means a corporation, individual, or other public or private entity that is engaged in a lawful business, professional, or instructional activity on a nonprofit basis and that has established its nonprofit status under applicable Federal, State, or Tribal law.

§ 700.85 Owner.

The term owner means the person who holds any interest in habitations and improvements to be acquired by the Commission pursuant to section 15(a) of the Act, which the Commission determines warrants consideration of ownership.

§ 700.87 Person.

The term person means any individual, partnership, corporation, or association.

§ 700.89 Relocation contract.

The Relocation Contract is that contract signed by the head of household in which he/she agrees to purchase an existing house or to construct a new house, the owner of such existing house or the builder of the proposed new house agrees to sell or perform the construction, and the Commission agrees to make payments according to such agreement.

[47 FR 17988, Apr. 27, 1982]

§ 700.91 Relocation report.

The relocation report shall be the report prepared by the Commission and submitted to Congress pursuant to section 13(a) of the Act.

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§ 700.93 Relocation plan.

The relocation plan shall be the plan prepared by the Commission and submitted to Congress pursuant to section 13(c) of the Act.

§ 700.95 Replacement housing funds.

Replacement housing funds means those funds authorized to be appropriated pursuant to section 25(a)(1) of the Act.

§ 700.97 Residence.

(a) Residence is established by proving that the head of household and/or his/her immediate family were legal residents as of December 22, 1974, of the lands partitioned to the Tribe of which they are not members.

[49 FR 22278, May 29, 1984]

§ 700.99 Salvage value.

Salvage value means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

§ 700.101 Single person.

A single person is a widow, widower, unmarried or divorced person.

§ 700.103 Uniform Act.

The term Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-646).

§ 700.105 Utility charges.

Utility charges means the cost for heat, lighting, hot water, electricity, natural gas, butane, propane, wood, coal or other fuels water, sewer and trash removal.

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Subpart B—Acquisition and Disposal of Habitations and/or Improvements

§ 700.111 Applicability of acquisition requirements.

General. The requirements of this subpart B apply to all Commission acquisition of habitations and/or improvements that occur on or after the effective date of these regulations.

§ 700.113 Basic acquisition policies.

(a) *Appraisal and invitation to owner.* Before the initiation of negotiations, the Commission shall have the habitations and/or improvements appraised to its satisfaction and will attempt to assure that the owner or his designated representative is contacted in advance of the appraisal(s) and given an opportunity to accompany each appraiser during the appraiser's inspection of the property.

(b) *Determination and offer of fair market value.* Before the initiation of negotiations, the Commission shall establish an amount which it believes is fair market value for improvements. This amount shall be based on a current appraisal at the time negotiations commence for the Relocation Contract between the NHIRC and the relocatee. The appraisal will be adjusted according to the Boeckh Building Cost Modifier for time or any physical changes in the improvements. If any changes are necessary the appraisal will be corrected to reflect a current dollar value. The amount of the current appraisal will be offered as just compensation for the improvements acquired, except as provided in paragraph (d) of this section. A copy of the initial appraisal will be sent to the owner as soon as possible after the appraisal program is completed.

(c) *Basic negotiation procedures.* The Commission will attempt to meet with the owner or his/her representative to discuss its offer to purchase his/her property including the basis for the determination of fair market value and explain acquisition policies and procedures, including payment of incidental expenses. The owner shall be given reasonable opportunity to present material which he/she believes is relevant to determining the value of the property

and to suggest modification in the proposed terms and conditions of the purchase. The Commission shall consider the owner's presentation.

(d) If the condition of the property indicates the need for a new appraisal or if a significant delay has occurred since the time of the latest appraisal of the property, the Commission shall have the appraisal updated or obtain a new appraisal. If a new appraisal is for a lesser value than the previous appraisal and said lesser value is due to damage done to the property during the time between the two appraisals, and such damage was not caused by the owner of the improvement, the owner shall be entitled to the higher appraisal value.

(e) [Reserved]

(f) *Objection to determination of fair market value.* If the owner objects to the Commission's determination of fair market value, the owner may request a hearing pursuant to the Commission's Hearing and Administrative Review procedures;

(g) *Payment before taking possession.* Before requiring an owner to surrender possession of his habitations and/or improvements, the Commission shall—

(1) Apply the agreed purchase price towards the acquisition price of the replacement dwelling or;

(2) Deposit with the court in an appropriate proceeding, such as divorce or probate, for the benefit of the owner, an amount not less than the Commission's determination of fair market value for the property or the court award of compensation for the property up to the maximum benefit allowed under the then existing replacement housing benefit.

§ 700.115 Preliminary acquisition notice.

As soon as feasible in the acquisition process, the Commission shall issue a preliminary acquisition notice to the owner. The notice shall—

(a) Inform the owner of the Commission's interest in acquiring his/her habitations and/or improvements.

(b) Explain that such preliminary acquisition notice is not a notice to vacate and that it does not establish eligibility for relocation payments or

other relocation assistance under these regulations.

§ 700.117 Criteria for appraisals.

(a) *Appraisal standards.* The Commission's appraisals shall be based upon nationally recognized appraisal standards and techniques to the extent that such principles are consistent with the concepts of value that the Commission may establish.

(b) *Documentation.* Appraisal reports must contain sufficient documentation, including supporting valuation data and the appraiser's analyses of that data, to demonstrate the reasonableness of the appraiser's opinion(s) of value.

(c) *Conflict of interest.* No appraiser shall have any interest, direct or indirect, in the habitations and/or improvements which he appraises for the Commission that would in any way conflict with his performance of the appraisal.

§ 700.119 Establishment of fair market value.

(a) *General.* The Commission shall establish the amount of fair market value to be offered to the owner for the habitations and/or improvements. Such amount shall not be less than—

(1) The appraiser's recommendations as to the fair market value of the habitations and/or improvements; or

(2) The fair market value estimate set forth in the agency's approved appraisal, if the property is valued at \$2,000 or less.

(b) *Owner retention of improvements.* If the owner of a habitation and/or improvement is permitted to retain it for removal off-site, the amount determined to be just compensation for the interest in habitations and/or improvements to be acquired from him shall not be less than the amount determined by subtracting the salvage value of the improvements he retains for off-site removal from the amount determined to be fair market value for his entire interest in the habitation and improvement. Retention of improvements by the owner shall not change, alter or abrogate the requirement of the Act that the owner must move from land partitioned to the tribe of which he/she is not a member.

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§ 700.121 Statement of the basis for the determination of fair market value.

At the time of the initiation of negotiations to acquire the habitations and/or improvements, the Commission shall furnish the owner, along with the initial written purchase offer, a written statement of the basis for the determination of fair market value. To the extent permitted by the Commission, the statement shall include the following—

(a) A description and location identification of the habitations and/or improvements to be acquired.

(b) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant removable building equipment, which are considered to be part of the habitations and/or improvements for which the offer of fair market value is made.

(c) A recital of the amount of the offer and a declaration that such amount—

(1) Is the full amount believed by the Commission to be just compensation for the property and is not less than the fair market value of the property as determined on the basis of the appraisal(s);

(2) Does not reflect any relocation payments or other relocation assistance which the owner is entitled to receive.

(d) If only a portion of a habitation and/or improvement is to be acquired, an apportionment of the total estimated just compensation for the partial acquisition will be made. In the event that the Commission determines that partial acquisitions are necessary, all portions so acquired will be acquired simultaneously.

§ 700.123 Expenses incidental to transfer of ownership to the Commission.

Eligible costs. The Commission shall reimburse the owner for reasonable expenses he/she necessarily incurred incidental to the transfer of habitations and/or improvements to the Commission. The Commission is not required to pay costs solely required to perfect the owner's interest in the habitations and/or improvements.

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§ 700.125 Disposal of property.

Property acquired by the Commission pursuant to the Act shall be disposed of in one of the following manners:

(a) If the Commission determines that the property acquired constitutes a substantial risk to public health and safety, the Commission may remove or destroy the property.

(b) The Commission may transfer the property acquired by gratuitous conveyance to the tribe exercising jurisdiction over the area. Notice of such transfer shall be in writing and shall be completed within sixty (60) days from the finalization of all property acquisition procedures, unless the tribe notifies the Commission in writing within that time that the property transfer is refused. In the event of a refusal by the tribe, the Commission shall remove the property.

§ 700.127 Payments for acquisition of improvements.

Payments for acquisition of improvements shall be made in the following situations:

(a) To individuals who have been denied benefits under these rules and who can prove ownership of habitations and improvements on land partitioned to the tribe of which they are not members. If the owner is deceased the payment shall be made to his or her estate. Payments under this subsection are further limited by 25 U.S.C. 640d-14(c), Pub. L. 93-531, sec. 15(c).

(b) To individuals who have been certified as eligible for relocation benefits but who at the time of certification, own a decent, safe and sanitary dwelling as determined by the Commission pursuant to § 700.187 and who own habitation and improvements on land partitioned to the tribe of which they are not members.

Ownership shall be determined on the basis of Commission appraisal records at the time of the initial eligibility determination.

(25 U.S.C. 640d, Pub. L. 93-531, 25 U.S.C. 640d-14, Pub. L. 96-305)

[49 FR 35379, Sept. 7, 1984]

Subpart C—General Relocation Requirements

§ 700.131 Purpose and applicability.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this part. The relocation requirements of the regulations in this part apply to the relocation of any displaced person.

§ 700.133 Notice of displacement.

After the Commission's Relocation Report and Plan is in effect pursuant to the Act, the Commission shall issue a preliminary relocation notice to each person identified by the Commission as potentially subject to relocation. This notice shall—

(a) Be published in a newspaper of general circulation in the area of the former Joint Use Area at least two times, and shall be sent to each Chapter House on the former Joint Use Area for posting.

(b) Inform the person that he/she will be required to relocate permanently in the future unless the person has applied for and is determined to be eligible for a Life Estate.

(c) Generally describe the relocation assistance program for which the person may become eligible, including the maximum allowable dollar amounts and basic conditions of eligibility for the payments.

§ 700.135 Relocation assistance advisory services.

(a) *General.* The Commission may carry out a relocation assistance advisory program which offers the services described in paragraph (b) of this section. If the Commission determines that a person occupying habitations and/or improvements adjacent to the habitations and/or improvements acquired pursuant to the Act is caused substantial social, economic cultural or other injury because of such acquisition, it may offer such services to such person.

(b) *Services to be provided.* The advisory program will include such measures, facilities, and services as may be necessary or appropriate in order to—

(1) Personally interview where possible each certified eligible head of household to determine his/her relocation needs and preferences, and explain to him/her the relocation payments and other assistance for which he/she may be eligible, the related eligibility requirements, and the procedures for obtaining such payments and assistance;

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of replacement dwellings and commercial and farm properties and locations, as the case may be.

(3) Assure that replacement dwellings are available to all certified eligible heads of households.

(4) Assist any persons displaced from a business or farm operation to obtain and become established in a suitable replacement location;

(5) Supply persons to be displaced with appropriate information concerning Tribal, Federal, State or local housing programs, disaster loans and other programs administered by the Small Business Administration, and other Federal or State programs offering assistance to persons to be displaced;

(6) Endeavor to minimize the adverse social, economic, cultural and other hardships and impacts of relocation on persons involved in adjusting to such relocation.

(c) *Coordination of relocation activities.* The Commission shall, to the maximum extent feasible, coordinate its relocation assistance advisory services activities with existing local, state, federal and Tribal agencies to the extent necessary to enable it to carry out its program. Referrals of displaced persons for services to existing services providers will be utilized whenever possible.

(d) *Policy.* The Commission shall continue to provide assistance to a family, individual, business concern, non-profit organization, or farm operation until relocation has been achieved unless section § 700.139 becomes applicable.

(e) *Reasons for terminating assistance.* In general, the circumstances under which the Commission's relocation obligations cease are the following:

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(1) Two years have elapsed since the family or individual has moved to a decent, safe and sanitary replacement dwelling and has received all assistance payments to which entitled.

(2) All reasonable efforts to trace a family or individual have failed.

(3) The family or individual on his/her own initiative moves to substandard housing and has refused reasonable offers of additional assistance in moving to a decent, safe and sanitary replacement dwelling.

(4) The business concern, farm operation, or non-profit organization has received all assistance and payments to which it is entitled, and has either been successfully relocated or ceased operations.

(5) Other relevant reasons as determined by the Commission.

§ 700.137 Final date for voluntary relocation application.

(a) In order to be considered for voluntary relocation assistance benefits, an applicant must have filed a completed application form with the Commission by the close of business on July 7, 1986.

(b) To qualify for relocation assistance, individuals must meet the eligibility requirements as of July 7, 1986.

[51 FR 19170, May 28, 1986]

§ 700.138 Persons who have not applied for voluntary relocation by July 7, 1986.

(a) Pursuant to 25 U.S.C. 640d-14 (d)(3) heads-of-household who do not make timely arrangements for relocation by filing an application by July 7, 1986, shall be provided a replacement home by the Commission. To be eligible for benefits (Housing and Moving Expenses), such persons must be, as of July 7, 1986, physically residing full time on land partitioned to a tribe of which they are not members and they must also otherwise meet all other current eligibility criteria.

(b) The Commission shall utilize amounts payable with respect to such households pursuant to 25 U.S.C. 640d-14(b)(2) and 25 U.S.C. 640d-34(a) for the construction or acquisition of a home and related facilities for such households.

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(c) Persons identified by the Commission as potentially subject to relocation who have not applied for relocation assistance shall be contacted by the Commission as soon as practicable after July 7, 1986. At such time, the Commission shall—

(1) Request that the head-of-household choose an available area for relocation, and contract with the Commission for relocation; and

(2) Offer the relocatee suitable housing; and

(3) Offer to purchase from the head-of-household the habitation and improvements; and

(4) Offer provisions for the head-of-household and his family to be moved (e.g., moving expenses, etc.).

(d) If a person so identified fails to agree to move after the actions outlined in this section are taken by the Commission and suitable housing is available (or sufficient funds are available to assure the relocation assistance to which the relocatee may be entitled), the Commission will issue a ninety-day notice stating the date by which the person will be required to vacate the area partitioned to the Tribe of which he is not a member.

[51 FR 19170, May 28, 1986]

§ 700.139 Referral for action.

Upon the expiration of all notice periods and upon the failure or refusal of any relocatees to make timely arrangements to move, the Commission shall forward the names and addresses of such relocatees to the Secretary of the Interior and to the U.S. Attorney for the District of Arizona for such action as they deem appropriate. The Commission will assure the availability of relocation assistance to which the relocatees may be entitled.

§ 700.141 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment under subpart D, E, F, G, or H of this part shall be submitted to the Commission on the appropriate Commission form and supported by such documentation as may reasonably be required by the Commission to demonstrate expenses incurred, such as bills and receipts.

(b) *Time for filing.* All claims for a relocation payment shall be filed with the Commission within sixty (60) days after the family occupies the replacement home unless this time period is extended by the Commission.

(c) *Direct payment of claim.* Relocation payments shall be made in accordance with the terms of the Relocation Contracts and are not subject to claims of creditors or assignments.

§ 700.143 Payments for divorced or separated relocatees.

General. The following considerations apply to certified eligible heads of household who are legally separated or divorced and intend to establish separate eligibility.

(a) *Determination of benefits.* Eligibility for relocation benefits is determined as of the time that the Relocation Contract is signed.

(1) If the divorce or separation took place before benefits were first applied for, the spouse who vacated the habitation will not be eligible for benefits and all relocation benefits will accrue to the spouse remaining in occupancy as head of the household remaining to be relocated.

(2) If both husband and wife are in possession of the habitation at the time that benefits are first applied for, and are divorced or separated prior to signing of a Relocation Contract, both husband and wife may qualify separately for benefits if each meets the requirements of eligibility under these regulations.

(3) If both husband and wife are in possession of the habitation at the time a Relocation Contract is signed but are divorced or separated prior to occupancy of the replacement dwelling, only one benefit will be paid to the household. Such benefits (including the assistance payment, moving expenses and replacement dwelling benefit) and the purchase price of the habitation and improvements may be prorated between husband and wife in such manner as they may agree in writing so long as such proration is consistent with the terms of the Relocation Contract. Such proration may also be made by a court of competent jurisdiction. In the absence of an agreement between the parties or a court order,

any necessary prorations shall be made by the Commission.

(b) For purposes of this section, a head of household shall be considered as married even though living apart from his or her spouse unless legally separated under a decree or separate maintenance.

[47 FR 17988, Apr. 27, 1982]

§ 700.145 Payments to estates.

(a) Relocation benefits can be paid to the estate of a deceased Certified Eligible Head of Household under the following circumstances:

(1) If there is no household requiring relocation pursuant to the Act surviving the deceased head of household:

(i) Compensation for the habitation and other improvements owned by the deceased head of household and the cost of removing personal property from the acquired habitation and other improvements shall be paid to the estate of a deceased head of household, or as otherwise directed by a court of competent jurisdiction.

(ii) No replacement housing benefit or assistance payment (bonus) shall be paid under this circumstance.

(2) Replacement housing benefits may be paid to an estate only when a certified eligible head of household was qualified for such a housing payment pursuant to the Act and signed a Relocation Contract but died before the replacement housing was occupied. The estate of a certified eligible head of household who had not signed a Relocation Contract at the time of his/her death is not eligible for payment of a replacement housing benefit.

(b) If one of a married couple who was a certified eligible head of household dies, the surviving spouse may be paid the same relocation assistance benefits, including replacement housing payments, which the couple would have received had death not occurred. If there is no surviving spouse, a court of competent jurisdiction may appoint a guardian to act for minor members of the household. The Commission shall deal with such guardian and any members of the household who have attained their majority in a manner to

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effect relocation of the remaining household under these regulations.

[47 FR 17988, Apr. 27, 1982]

§ 700.147 Eligibility.

(a) To be eligible for services provided for under the Act, and these regulations, the head of household and/or immediate family must have been residents on December 22, 1974, of an area partitioned to the Tribe of which they were not members.

(b) The burden of proving residence and head of household status is on the applicant.

(c) Eligibility for benefits is further restricted by 25 U.S.C. 640d-13(c) and 14(c).

(d) Individuals are not entitled to receive separate benefits if it is determined that they are members of a household which has received benefits.

(e) Relocation benefits are restricted to those who qualify as heads-of-household as of July 7, 1986.

[49 FR 22278, May 29, 1984, as amended at 51 FR 19170, May 28, 1986]

Subpart D—Moving and Related Expenses, Temporary Emergency Moves

§ 700.151 Eligibility.

(a) *General.* All certified eligible heads of household are eligible for moving and related expenses as prescribed in this subpart. A certified eligible head of household who lives on his/her business or farm property may be eligible for both a payment as a dwelling occupant and a payment with respect to the business or farm operation.

(b) *Least costly approach.* The amount of payment for an eligible expense under this subpart shall not exceed the least costly method, as determined by the Commission, of accomplishing the objective of the payment without causing undue hardship to the certified eligible heads of household.

(c) *Prior approval.* Written approval of the Commission must be obtained for all moving and search expenses in this subpart. Such approval shall be obtained by each certified eligible head of household prior to incurring any expense from the real estate specialist to

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whom the case is assigned. If prior approval and the amount thereof is not obtained from the Commission, the Commission thereafter will determine:

(1) Whether the travel was required and the expenses reasonable and;

(2) The amount of reimbursement to be paid, if any.

§ 700.153 Actual reasonable moving and related expenses—residential moves.

Subject to the limitations contained in this subpart, a certified eligible head of household is entitled to actual reasonable expenses for—

(a) Transportation computed at prevailing federal per diem and mileage allowance schedules, meals and lodging away from home required by the Commission.

(b) Transportation computed at prevailing federal per diem and mileage allowance schedules of the household and personal property from the acquired site to the replacement site.

(c) Packing, crating, unpacking and uncrating of the personal property.

(d) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property;

(e) Storage of the personal property, not to exceed one year unless extended by the Commission.

(f) Insurance of the personal property in connection with the move and necessary storage; and

(g) Other moving related expenses that are not listed as ineligible under § 700.165, as the Commission determines to be reasonable and necessary.

§ 700.155 Expenses in searching for replacement dwelling—residential move.

(a) A certified eligible head of household is entitled to actual reasonable expenses incurred in the search for a replacement dwelling.

(b) Transportation, meals and lodging when required to be away from home by the Commission, computed at prevailing federal per diem and mileage allowance schedules.

§ 700.157 Actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Subject to the limitations of § 700.151(c) a certified eligible business, farm operation or nonprofit organization is entitled to payment for actual reasonable expenses for:

- (1) Transportation of personal property from the acquired site to the replacement site.
- (2) Packing, crating, unpacking, and uncrating the personal property.
- (3) Disconnecting, dismantling, removing, reassembling and installing relocated and substitute machinery, equipment, and other personal property. This includes connection to utilities available nearby and modifications necessary to adapt such property to the replacement structure or to the utilities or to adapt the utilities to the personal property;
- (4) Storage of the personal property;
- (5) Insurance of personal property in connection with the move and necessary storage;
- (6) Any license, permit or certification required by the displaced person, to the extent such cost is (i) necessary to its re-establishment at the replacement location and (ii) does not exceed either the cost for one year or for the remaining useful life of the existing license, permit, or certification, whichever is less;
- (7) Professional services, including architect's, attorney's and engineer's fees, and consultant's charges, necessary for (i) planning the move of the personal property, (ii) moving the personal property, or (iii) installing the relocation personal property at the replacement location.
- (8) Relettering signs and printing replacement stationery made obsolete as a result of the move;
- (9) Actual direct loss of personal property;
- (10) Purchase of substitute personal property;
- (11) Searching for a replacement location;
- (12) Other moving-related expenses that are not listed as ineligible under § 700.165.

(b) *Self-move.* If the displaced person self-moves his business, farm operation, or nonprofit organization, the

Commission may approve a payment for his moving expenses in an amount not to exceed the lowest acceptable bid or estimate obtained by the Commission, without submission of documentation of moving expenses actually incurred.

(c) *Notification to Commission and inspection.* To be eligible for a payment under this section, the displaced person shall permit the Commission to make reasonable and timely inspections of the personal property at the displacement and replacement sites.

§ 700.159 Payment for direct loss of personal property—nonresidential moves.

(a) *General.* A certified eligible business is entitled to payment for actual direct loss of an item of tangible personal property incurred as a result of moving or discontinuing his business, farm operation, or nonprofit organization. The payment shall consist of the reasonable costs incurred in attempting to sell the item plus the less of—

(1) The fair market value of the item for continued use at the acquired site, less the proceeds from its sale. (When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price); or

(2) The estimated cost of moving the item, but with no allowance for storage. (If the business, farm operation or nonprofit organization is discontinued, the estimated cost shall be based on a moving distance of 50 (fifty) miles.)

(b) *Advertising sign.* The amount of a payment for direct loss of an advertising sign, which is personal property, shall be the lesser of—

(1) The depreciated reproduction cost of the sign as determined by the Commission, less the proceeds from its sale; or

(2) The estimated cost of moving the sign.

(c) *Sales effort.* To be eligible for payment for direct loss of personal property, the claimant must make good faith effort to sell the personal property, unless the Commission determines that no such effort is necessary.

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(d) *Transfer of ownership.* To be eligible for payment for direct loss of personal property, the claimant shall transfer to the Commission ownership of the unsold personal property.

§ 700.161 Substitute personal property—nonresidential moves.

(a) *General.* If an item of personal property, which is used as part of a business, farm operation or nonprofit organization, is not moved but is promptly replaced with a comparable substitute item at the replacement site, the displaced person is entitled to payment of the lesser of—

(1) The cost of the substitute item, including installation cost at the replacement site, minus any proceeds from the sale or trade-in of the replaced item, if any; or

(2) The estimated cost of moving the replaced item, based on the lowest acceptable bid or estimate obtained by the Commission for eligible moving and related expenses, but with no allowance for storage.

(b) *Transfer of ownership.* To be eligible for a payment under this section, the claimant shall transfer to the Commission ownership of the personal property that has not been sold or traded in.

§ 700.163 Expenses in searching for replacement location—nonresidential moves.

A displaced business, farm or nonprofit organization is entitled to an amount not to exceed \$500 (five-hundred dollars), as determined by the Commission, for actual reasonable expenses incurred in searching for a replacement location, including—

(a) Transportation computed at prevailing federal per diem and mileage allowance schedules; meals and lodging away from home;

(b) Time spent searching, based on reasonable earnings;

(c) Fees paid to a real estate agent or broker to locate a replacement site.

§ 700.165 Ineligible moving and related expenses.

A displaced person is not entitled to payment for—

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(a) The cost of moving any structure or other improvement in which the displaced person reserved ownership; or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Physical changes at replacement location of business, farm or nonprofit organization, except as provided at § 700.157; or

(g) Any additional expense of a business, farm, or nonprofit organization incurred because of operating in a new location.

§ 700.167 Moving and related expenses—fixed payment.

A displaced person (other than an outdoor advertising display business who is eligible for a payment for his actual moving and related expenses under subpart D of these regulations) is entitled to receive a fixed payment in lieu of a payment for such actual moving and related expenses.

§ 700.169 Fixed payment for moving expenses—residential moves.

The fixed payment for moving and related expenses of a certified eligible head of household from a dwelling consists of—

(a) A moving expense allowance not to exceed \$300 (three hundred dollars).

(b) A dislocation allowance of \$200 (two hundred dollars).

§ 700.171 Fixed payment for moving expenses—nonresidential moves.

(a) *General.* The fixed payment for moving and related expenses of a displaced business or farm operation that meets applicable requirements under this section is an amount equal to its average annual net earnings as computed in accordance with § 700.173, but not less than \$2,500 nor more than \$10,000. A nonprofit organization which meets the applicable requirements under this section is entitled to a payment of \$2,500.

(b) *Business.* A business qualifies for payment under this section if the Commission determines that—

(1) The business cannot be relocated without a substantial loss of its existing patronage.

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the Commission, and which is under the same ownership and engaged in the same or similar business activities. For purposes of this rule, no remaining business facility which had average annual gross receipts of less than \$1,000 and average annual net earnings of less than \$500, during the two taxable years prior to displacement, shall be considered "another establishment"; and

(3) The business had (i) average annual gross receipts of at least \$1,000 during the two taxable years prior to displacement, or (ii) average annual net earnings of at least \$500 as determined in accordance with § 700.173. However, the Commission may waive this test in any case in which it determines that its use would cause a substantial hardship.

(c) *Determining number of businesses acquired.* In determining whether two or more legal entities, all of which have been acquired, constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which—

(1) The same premises and equipment are shared;

(2) Substantially identical or inter-related business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business, and

(4) The same person or closely related persons own, control or manage the affairs of the entities.

(d) *Farm operation.* A farm operation qualifies for a payment under this section if the Commission determines that it meets the criteria set forth in § 700.171(b)(3). In the case of a partial acquisition, the fixed payment shall be made only if the Commission determines that—

(1) The part acquired was a farm operation before the acquisition; or

(2) The partial acquisition caused the operator to be displaced from the farm operation; or

(3) The partial acquisition caused a substantial change in the nature of the farm operation.

(e) *Nonprofit organization.* A nonprofit organization qualifies for a \$2,500 payment under this section, if the Commission determines that it—

(1) Cannot be relocated without a substantial loss of existing patronage (membership and clientele). A nonprofit organization is assumed to meet this test, unless the Commission demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Commission.

§ 700.173 Average net earnings of business or farm.

(a) *Computing net earnings.* For purposes of this subpart, the average annual net earnings of a business or farm operation is one-half of its net earnings before Federal, State and local income taxes, during the two taxable years immediately prior to the taxable year in which it was displaced. However, if the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be computed on the basis of the actual period of operation on the acquired site, projected to an annual rate. Also, average annual net earnings may be based upon a different period of time when the Commission determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, his spouse, or dependents.

(b) *Documentation.* A displaced person who elects to receive a fixed payment in lieu of actual expenses incurred in moving his business or farm shall furnish the Commission proof of his net earnings through income tax returns, certified financial statements or other reasonable evidence.

§ 700.175 Temporary emergency moves.

(a) *General.* An eligible household may be granted temporary relocation resources, at the Commission's discretion, provided:

(1) That the move is for a limited time period not to exceed 12 months unless extended by the Commission.

(2) That permanent relocation resources are not available at the time of displacement.

(3) Prior approval of the Commission is obtained.

(4) That a Relocation Contract providing for permanent relocation has been executed.

(5) The head of household actually remained domiciled on lands partitioned to the tribe of which he is not a member as of December 22, 1974, and continuously thereafter.

(6) The head of household shall vacate all improvements owned by him on lands partitioned to the tribe of which he is not a member and shall transfer title to said improvements to the Commission.

Temporary relocation shall in no way diminish the responsibility of the Commission to offer relocation assistance and services designed to achieve permanent and suitable facilities.

(b) *Conditions under which move to temporary housing accommodations may be approved.* The move of a family or individual into temporary housing accommodations may be approved by the Commission only if the following conditions are met.

(1) The move will be undertaken because:

(i) It is necessary because of an emergency as determined by the Commission; or

(ii) The individual or family is subject to conditions hazardous to his or his family's health or safety.

(2) The temporary housing is decent, safe, and sanitary.

(3) The Commission shall have determined that within twelve (12) months of the date of the temporary move, replacement housing meeting Commission-approved standards will be available for occupancy by the persons temporarily rehoused.

(4) Prior to the move, the Commission shall provide in writing assurance to each head of household that:

(i) Replacement housing will be available at the earliest possible time but in any event no later than twelve (12) months from the date of the move to temporary housing.

(ii) Replacement housing will be made available on a priority basis, to the individual or family who has been temporarily rehoused.

(iii) The move to temporary rehousing will not, in any way, affect a claimant's eligibility for a replacement housing payment nor deprive him of the same choice or replacement housing units that would have been made available had the temporary move not been made.

(iv) The Commission will pay all costs in connection with the move to temporary housing, including any increased housing costs.

(c) *Agency documentation.* To request Commission approval for a temporary move of a family, the following information shall be submitted to the Commission (additional information may be required on a case-by-case basis):

(1) An explanation of the necessity for the temporary move, based upon the criteria set forth by the Commission.

(2) The estimated duration of the temporary occupancy.

(3) In the case of the family or individual, (i) a copy of the written assurance which will be provided to the person explaining his rights and the continuing obligation of the agency to provide relocation assistance, and (ii) evidence that the family or individual agrees to make the temporary move.

(d) *Costs in connection with temporary move—(1) Costs included.* Costs included in a temporary move may cover the following:

(i) Actual reasonable moving costs and related expenses for the move to temporary accommodations.

(ii) For the family or individual moved from a rental unit the difference, if any, between the rental cost of the dwelling vacated and the rental cost of the temporary unit.

(iii) For a homeowner who retains ownership of his dwelling the reasonable cost of renting the temporary dwelling.

(iv) For a homeowner whose dwelling has been acquired the difference, if any, between his housing costs for the acquired dwelling and the rental cost of the temporary unit.

(2) *Costs not a replacement home benefit.* Costs in connection with a move to

temporary accommodations are not to be considered as relocation payments under the Act. (See paragraph (e) of this section.)

(e) *Distinguishing between cost of temporary move and relocation payment.* The costs of a temporary move, as described in the foregoing subparagraphs, are not to be considered as all or a part of the relocation payment to which a displaced person is entitled under the Act. Thus, when a family is moved to temporary accommodations, a relocation payment is *not* made and the election or choice of type of payments that would ordinarily be made upon displacement must be delayed until the final move is made. When the move out of temporary accommodations is made, the displaced person shall receive the full relocation payments to which he/she is entitled pursuant to Commission regulations.

Subpart E—Replacement Housing Payments

§ 700.181 Eligibility.

(a) *Basic eligibility requirements.* A certified eligible head of household who established his/her residency requirements in the area partitioned to the tribe of which he/she is not a member, is eligible for the replacement housing payment specified at § 700.183(a).

(b) *Other rules and requirements.* A payment under this subpart E is subject to the other applicable rules and requirements of these regulations.

§ 700.183 Determination of replacement housing benefit.

(a) *Amount of benefit.* The replacement housing benefit for a certified eligible head-of-household is an amount not to exceed fifty-five thousand dollars (\$55,000) for a household of three or less and not to exceed sixty-six thousand dollars (\$66,000) for a household of four or more. Subject to such other requirements of these regulations as may apply, the replacement housing benefit shall be calculated as follows:

(1) The amount of the fair market value of the habitation and improvements purchased from an eligible head-of-household pursuant to subpart B of this part shall be applied first toward the cost of a replacement dwelling.

(2) An additional amount shall be added to the value of the habitation and improvements to equal the cost of a decent, safe, and sanitary replacement dwelling.

(3) The total value of the replacement dwelling shall not exceed the amount of the replacement housing benefit specified in paragraph (a) of this section.

(4) In the event the cost of providing a decent, safe, and sanitary replacement dwelling is less than the fair market value of the habitation and improvements purchased from an eligible head-of-household pursuant to subpart B of this part, the difference shall be paid to that head-of-household.

(b) The Commission shall, on or before the first Friday in April of each fiscal year, after consultation with the Secretary of the Department of Housing and Urban Development, annually increase, decrease or leave unadjusted the above limitations on replacement housing benefits to reflect changes in housing or development and construction costs, other than costs of land, during the preceding year. In determining whether to increase or decrease the replacement housing benefit limitations set forth above, the Commission shall consider the following:

(1) The most recent percentage rate of increase or decrease in single family housing construction costs reported by HUD. (General Prototype Housing Costs For One to Four Family Dwelling Units).

(2) The most recent Boecht Building Cost Modifier.

(3) The experience of relocatee families in obtaining replacement housing within the current benefits.

(4) The cost of available replacement housing which meets Commission standards as set forth in these regulations.

(5) Such other available information which the Commission deems appropriate and which is relevant to a determination of whether replacement housing benefits should be increased or decreased to reflect change in housing or development and construction costs during the preceding year.

(c) If the owner retains ownership of his dwelling, moves it from the acquired site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be considered to be the sum of—

(1) The cost of the replacement site, if any; plus

(2) The moving and restoration expenses; plus

(3) The costs, if any, incurred to make the unit a decent, safe, and sanitary replacement dwelling; but not to exceed the above limitation on total replacement home benefits.

[47 FR 17988, Apr. 27, 1982, as amended at 52 FR 21951, June 10, 1987]

§ 700.187 Utilization of replacement home benefits.

The Commission shall assure that all eligible heads of household receive a decent, safe and sanitary replacement dwelling in the following manner:

(a) If the eligible head of household owns no dwelling other than that on the area from which he or she must move pursuant to the Act, the Commission will make funds available to the head of household as provided in these regulations for the acquisition of a replacement home in one of the following manners:

(1) Purchase of an existing home, by the head of household,

(2) Construction of a home by the head of household,

(3) Participation or purchase by the head of household in a mutual help housing or other home ownership project under the U.S. Housing Act of 1937 (50 Stat. 888, as amended; 42 U.S.C. 1401) or in any other federally assisted housing program.

(b) If the eligible head of household owns or is buying or building a home in an area other than the area from which he or she must move pursuant to the Act, the Commission will expend relocation benefits in one of the following manners:

(1) If the home is decent, safe, and sanitary, but is encumbered by a mortgage, such mortgage existing as of the effective date of these regulations, the Commission will expend replacement housing benefits up to the maximum then existing benefit to accelerate to the maximum extent possible the

achievement by that household of debt-free home ownership.

(2) If the home is owned free and clear but does not meet Commission decent, safe, and sanitary standards, the Commission will, at its discretion, either:

(i) Expend replacement home benefits for improvements to assure the home meets decent, safe, and sanitary standards, or

(ii) Expend replacement home benefits for the acquisition of a replacement dwelling as if the eligible head of household or spouse did not own a home as in paragraph (a) of this section.

(3) If the home is neither owned free and clear nor decent, safe, and sanitary, the Commission will, at its discretion, either:

(i) Expend replacement home benefits for improvements to assure that the home meets decent, safe, and sanitary standards, and to accelerate to the maximum extent possible the achievement of debt-free home ownership, or

(ii) Expend replacement home benefits for the acquisition of a replacement dwelling as if the eligible head of household or spouse did not own a home as in paragraph (a) of this section.

(4) If the home is decent, safe, and sanitary, and is owned free and clear, no replacement home benefits will be paid.

(c) Home improvements shall include the following: General repairs, painting and texturing, fencing—including corals, landscaping, grading, room additions, re-modeling, roofing, insulating, repair or improvements to the water, sewerage, cooling, heating, or electrical systems, storage buildings, energy conservation measures, and other home improvements as determined and defined by the Commission.

(d) In implementing these regulations the Commission will encourage the use of innovative energy or other technologies in order to achieve the minimum monthly housing cost feasible for each replacement house.

§ 700.189 Expenditure of replacement home benefits.

Replacement home benefits shall be expended or obligated in full at or before the time of original acquisition except as stated below. It is not anticipated that such exceptions would be common and each such instance shall be reviewed and a determination will be made by the Certification Officer.

(a) Under unusual circumstances such as: Unknown (latent) defects in the replacement dwellings, significant change of circumstances and extreme hardship, benefits may be expended after the time of original acquisition up to the existing maximum replacement home benefit.

(b) All replacement home benefits shall be expended not later than one (1) year after the date of payment of the incentive bonus, except under unusual circumstances as stated above, up to the statutory maximum.

(c) Replacement home benefits shall not be expended for maintenance except under unusual circumstances as stated above, up to the statutory maximum.

(d) For purposes of this paragraph, the time of original acquisition shall be defined as the date of execution of the Commission's Relocation Contract.

Subpart F—Incidental Expenses**§ 700.195 General.**

Incidental expenses are those reasonable expenses, as determined by the Commission, to be incidental to the purchase of the replacement dwelling, but not prepaid.

§ 700.197 Basic eligibility requirements.

A certified eligible head of household is eligible for reimbursement of expenses that are incidental to the purchase of a replacement dwelling, as provided in § 700.199 hereof.

§ 700.199 Incidental expenses.

(a) *Eligible costs.* Subject to the limitations in paragraphs (b) and (c) of this section, the incidental expenses to be paid are those actually incurred by the displaced person incident to the purchase of the replacement dwelling, including—

chase of the replacement dwelling, including—

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing plats, recording fees; and title insurance;

(2) Lender, FHA or VA appraisal fees;

(3) FHA or VA application fee;

(4) Certification of structural soundness when required by the lender;

(5) Credit report;

(6) Owner's and mortgagee's evidence or assurance of title;

(7) Escrow agent's fee;

(8) State revenue or documentary stamps, sales or transfer taxes;

(9) Such administrative costs as are necessary to secure and acquire home-site leases and/or allotments on tribal lands. These costs may include survey fees, appropriate tribal fees and other conveyance instruments as may be appropriate;

(10) Costs, such as advertising charges, incurred incident to the purchase of the improvements owned by the head of household.

(11) Cost related to fee inspector's inspections of the replacement dwelling.

(12) Such other costs as the Commission determines to be incidental to the purchase.

(b) *Truth in lending charge.* Any expense, which is determined to be part of the debt service or finance charge under 15 U.S.C. 131-1641 and Regulation Z (12 CFR part 226) issued thereunder by the Board of Governors of the Federal Reserve System, is not eligible for reimbursement as an incidental expense.

Subpart G—Assistance Payments (Incentive Bonus)**§ 700.205 Eligibility requirements.**

A certified eligible head of household is eligible for the assistance payment pursuant to section 14(b) of the Act.

(a) *Amount of payment.* The amount of payment shall be computed in accordance with the schedule provided for in section 14(b) of the Act.

(b) *Date for determination of amount of assistance payment.* The date of completion and filing with the Commission of the Application for Relocation Assistance and Agreement to Relocate shall

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be the date used for determination of the amount of the assistance payment.

(c) *Time of payment.* Assistance payments provided for in this section shall only be paid upon actual occupancy of the replacement dwelling and vacation of the acquired habitation and/or improvement, if any, in the area partitioned to the Tribe of which he/she is not a member.

Subpart H—Last Resort Replacement Housing

§ 700.209 Applicability.

The provisions of this subpart apply only when the Commission determines that, unless it acts under the provisions of this subpart, there is a reasonable likelihood that replacement dwelling(s) will not be available on a timely basis to person(s) to be displaced.

§ 700.211 Basic rights and rules.

The provisions of this subpart do not deprive any displaced person of any rights described elsewhere in these regulations. The Commission may meet its obligation to provide persons with reasonable opportunities to relocate to a replacement dwelling by offering such opportunities developed or to be developed under this subpart.

§ 700.213 Methods of providing last resort replacement housing.

(a) *General.* The methods of providing last resort housing include, but are not limited to—

- (1) Rehabilitation of, and/or additions to, an existing replacement dwelling;
- (2) A replacement housing payment in excess of the limits set forth in subparts E and F of this part or the provision of direct Commission mortgage financing;
- (3) The construction of a new replacement dwelling;
- (4) The relocation and, if necessary, rehabilitation of a replacement dwelling;
- (5) The purchase of land and/or a replacement dwelling by the Commission and subsequent sale or lease to, or exchange with, a displaced person; and
- (6) The removal of barriers to the handicapped as may be necessary.

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Subpart I—Commission Operations

§ 700.219 General.

(a) The operation of the Commission shall be governed by a Management Manual passed, amended or repealed by a majority of the Commission at any regular or special meeting. The Management Manual is the prescribed medium for publication of policies, procedures and instructions which are necessary to facilitate the day-to-day operations and administration of the Commission.

(b) *Meetings.* The Commission shall hold a regular monthly meeting on the first Friday of each month at a time and place designated by public notice unless said Friday falls on a legal holiday, in that event, the meeting shall begin on the next regular workday. The monthly meeting may continue for as many days thereafter as is necessary to complete the regular affairs of the Commission, and may be recessed from time to time and reconvened at times designated by the Chairperson.

(c) *Special public meetings.* May be called by any Commissioner with ten (10) working days written notice given to the other Commissioners. Written notice may be waived by a release bearing the signatures of all three Commissioners.

(d) *Executive Session.* During a regular or special meeting, any Commissioner may request an Executive Session for purposes of personnel and administrative matters.

(e) *Compliance with other laws and regulations.* As a federal agency, the Commission will conduct its activities in conformance with applicable federal statutes and administrative procedures.

Subpart J—Inspection of Records

§ 700.235 Purpose and scope.

(a) This subpart contains the regulations of the Commission implementing the requirement of subsection (a)(3) of the Freedom of Information Act, 5 U.S.C. 552(a)(3), which provides that the Commission “upon any request for records which (1) Reasonably describes

such records and (2) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person." This subpart describes the procedures by which records may be obtained from the Commission. The procedures in this subpart are not applicable to requests for records published in the FEDERAL REGISTER or opinions in the adjudication of cases, statements of policy and interpretations and administrative staff manuals which have been published or made available under subpart A of this part.

§ 700.237 Definitions.

Act. As used in this subpart, "Act" means the "Freedom of Information Act," 5 U.S.C. 552.

§ 700.239 Records available.

(a) *Commission policy.* It is the policy of the Commission to make the records of the Commission available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act.

(b) *Statutory disclosure requirement.* The Freedom of Information Act requires that the Commission, on a request from a member of the public to inspect or copy records made in accordance with the procedures in this subpart, shall promptly make the records available.

(c) *Statutory exemptions.* The Act exempts nine categories of records from this disclosure requirement. The Act provides that disclosure is not required of matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempt from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party

other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that production of such records would

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Commission to withhold information falling within an exemption only if (1) disclosure is prohibited by statute or Executive Order or (2) sound grounds exist for invocation of the exemption.

(e) *Deletion of portions of records.* If a requested record contains material within an exemption together with material not within an exemption and it is determined under the regulations in this subpart to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material.

(f) *Creation of records.* This subpart applies only to records which exist at the time a request for records is made. Records are not required to be created in response to a request by combining

or compiling selected items from the files or by preparing a new computer program, nor are records required to be created to provide the requester with such data as proportions, percentages, frequency distributions, trends, or comparisons.

(g) *Records of concern to other departments and agencies.* (1) If the release of a record would be of concern to both the Commission and another Federal agency, the record will be made available by the Commission only if the interest of the Commission is the primary interest. If the Commission's interest is not the primary interest, the requester shall be referred in writing to the agency having the primary interest. The Commission has the primary interest in a record if the record was developed pursuant to Commission regulations, directives, or request even though the record originated outside of the Commission.

(2) If the release of a record in which the Commission has a primary interest would be of substantial concern to another agency, the official processing the request, should, if administratively feasible and appropriate, consult with that agency before releasing the record.

(h) *Records obtained from the public.* If a requested record was obtained by the Commission from a person or entity outside of the Government, the official responsible for processing the request shall, when it is administratively feasible to do so, seek the views of that person or entity on whether the record should be released before making a decision on the request.

§ 700.241 Request for records.

(a) *Submission of requests.* A request to inspect or copy records shall be made to the installation where the records are located. If the records are located at more than one installation or if the specific location of the records is not known to the person wishing to inspect or copy the records, he may direct his request to the head of the appropriate bureau, or the bureau's chief public information officer, if any.

(b) *Form of request.* (1) Requests invoking the Freedom of Information Act shall be in writing.

(2)(i) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Commission familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, and the person or office that made it, the present custodian of the record, and any other information which will assist in location of the requested records. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(ii) If the description of a record sought is insufficient to allow identification and location of the record, the response denying the request on this ground shall so state and, to the extent possible, indicate what additional descriptive information, if any, would assist in location of the record.

(3) A request shall state the maximum amount of fees which the requester is willing to pay. Requesters are notified that under § 700.251, the failure to state willingness to pay fees as high as are anticipated by the Commission will delay running of the time limit and delay processing of the request, if the responsible official anticipates that the fees chargeable may exceed \$25.00.

(4)(i) To insure expeditious handling, requests shall be prominently marked, both on the envelope and on the face of the request, with the legend "FREEDOM OF INFORMATION REQUEST." The failure of a request to bear such a legend will not disqualify a request from processing under the procedures in this subpart if the request otherwise meets the requirements of this section. A request not bearing the legend "FREEDOM OF INFORMATION REQUEST" will not, however, be deemed to have been received for purposes of the running of the time limit set out in § 700.245 until it has been identified by bureau personnel as a Freedom of Information request and marked by them with this legend.

(ii) Commission personnel identifying a communication from the public not bearing the legend "FREEDOM OF INFORMATION REQUEST" as a request otherwise meeting the requirements of this section shall immediately (A) mark the communication with the legend "FREEDOM OF INFORMATION REQUEST." (B) date the request to reflect the date on which it was identified, and (C) take steps to assure proper processing of the request under the procedures in this subpart.

(d) *Categorical requests.* (1) A request for all records falling within a reasonably specific category shall be regarded as conforming to the statutory requirement that records be reasonably described if (i) it can be determined which particular records are covered by the request and (ii) the records can be searched for, collected and produced without unduly burdening or interfering with Commission operations because of the staff time consumed or the resulting disruption of the files.

(2) If a categorical request is determined under paragraph (d)(1) of this section not to reasonably describe the records requested, the response denying the request on that ground shall specify the reasons why and shall extend to the requester an opportunity to confer with knowledgeable Commission personnel in an attempt to reduce the request to manageable proportions by reformulation and by agreeing on an orderly procedure for the production of the records.

§ 700.243 Action on initial requests.

(a) *Granting of requests.* (1) A requested record shall be made available if (i) the record is not exempt from disclosure or (ii) the record is exempt from disclosure, but its withholding is neither required by statute or Executive order nor supported by sound grounds.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the official processing the request shall immediately notify the person requesting the record as to where and when the record is available for inspection or as the case may be, where and when copies will be available. If fees are due under § 700.251, the responsible official shall also state the

amount or, if the exact amount cannot be determined, the approximate amount of fees due.

(2) If the record was obtained by the Commission from a person or entity outside of the Government, the responsible official shall, when it is administratively feasible to do so, notify that person or entity that the record has been made available.

(c) *Denial of requests.* (1) A request for a record may be denied only if it is determined that (i) the record is exempt from disclosure and (ii) that withholding of the record is required by statute or Executive order or supported by sound grounds.

(2) A request to inspect or copy a record shall be denied only by the Freedom of Information Act Officer or by an official whom the Executive Director has in writing designated.

(d) *Form of denial.* A reply denying a request shall be in writing and shall include:

(1) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record;

(2) The sound ground for withholding;

(3) A listing of the names and titles or positions of each person responsible for the denial;

(4) A statement that the denial may be appealed to the Commission pursuant to § 700.247 and that such appeal must be in writing and be received by this official within twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) after the date of the denial, in the case of the denial of an entire request, or within twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) of records being made available, in the case of a partial denial, by writing to the Freedom of Information Act Officer, Navajo-Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

(e) *Exception.* The requirements of paragraphs (c), (d), and (e) of this section do not apply to requests denied under § 2.14 on the ground that the request did not reasonably describe the records requested or to requests for records which do not exist.

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(f) *Filing of denials.* Copies of all replies denying, in whole or part, a request for a record which are issued under this section of § 700.243 shall be promptly submitted by the Freedom of Information Act Officer, denials to the Executive Director and the Commission's legal counsel.

§ 700.245 Time limits on processing of initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within no more than ten (10) days (excepting Saturdays, Sundays, and legal public holidays) after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* For purposes of paragraph (a) of this section, the time limit commences to run when a request is received at the Commission's office in Flagstaff, Arizona.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting upon an initial request may be extended to the extent reasonably necessary to the proper processing of the particular request, but in no case may the time limit be extended for more than ten (10) working days:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) *Authority to make extensions.* (1) An extension of time under paragraph (c) of this section may be made only by the Freedom of Information Act Officer or such higher authority as the Commission has in writing designated.

(2) The person requesting the records shall be notified in writing of the ex-

tension. The written notice shall state the reason for the extension and the date on which a determination on the request is expected to be dispatched.

(3) The Freedom of Information Act Officer shall be responsible for promptly furnishing copies of such notices to the Executive Director and the Commission's legal counsel.

(e) *Treatment of delay as denial.* (1) If no determination has been reached at the end of the ten (10) day period for deciding an initial request, or the last extension thereof, the requester may deem his request denied and may exercise a right of appeal in accordance with the provisions of § 700.247.

(2) When no determination can be reached within the applicable time limit, the responsible official shall nevertheless continue to process the request. On expiration of the time limit, the responsible official shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial for purposes of appeal to the Commission in accordance with § 700.247. The requester may be asked to consider delaying use of his right to appeal until the date on which the determination is expected to be dispatched. If the requester so agrees, he is deemed not to have treated the failure to respond within the applicable time limit as a denial for purposes of the running of the twenty (20) working-day appeal period set out in § 700.247. If a determination of the request is not issued by the new agreed upon date, or if the request is denied in whole or part, the requester will have available his full right of appeal under § 700.247, including the entire twenty (20) working-day period for filing of the appeal.

§ 700.247 Appeals.

(a) *Right of appeal.* Where a request for records has been denied, in whole or part, the person submitting the request may appeal the denial to the Commission.

(b) *Time for appeal.* An appeal must be received no later than twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) after the date of the initial denial, in the case of a denial of an entire request, or twenty (20) days

(Saturdays, Sundays, and public legal holidays excepted) after records have been made available, in the case of a partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to Freedom of Information Act Officer, Navajo-Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

(3)(i) Both the envelope containing the notice of appeal and the face of the notice shall bear the legend "FREEDOM OF INFORMATION APPEAL". The failure of an appeal to bear such a legend will not disqualify an appeal from processing under §2.18 if the appeal otherwise meets the requirements of this section. An appeal not bearing the legend "FREEDOM OF INFORMATION APPEAL" will not, however, be deemed to have been received for purposes of the running of the time limit set out in §700.249 until it has been identified by Commission personnel as a Freedom of Information appeal and marked by them with this legend.

(ii) Commission personnel identifying a communication from the public not bearing the legend "FREEDOM OF INFORMATION APPEAL" as an appeal otherwise meeting the requirements of this section shall immediately (A) mark the communication with the legend "FREEDOM OF INFORMATION APPEAL," (B) date the appeal to reflect the date on which it was identified, and (C) take steps to assure proper processing of the appeal under the procedures in this subpart.

(4) The Freedom of Information Act Officer shall be responsible for promptly furnishing copies of such notices to the Executive Director and the Commission's legal counsel.

§ 700.249 Action on appeals.

(a) *Authority.* Appeals from initial denials of requests for records shall be de-

cided for the Commission by the Executive Director after consultation with the Commission's legal counsel.

(b) *Time limit.* A final determination on any appeal shall be made within twenty (20) days (excepting Saturdays, Sundays, and public legal holidays) after receipt of the appeal.

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of §700.245 or was extended for fewer than ten (10) working days, the time for processing of the appeal may be extended by the Executive Director to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than ten (10) working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in §700.245(c) requires an extension.

(2) The Executive Director shall, in writing, advise the appellant of the reasons for the extension and the date on which a final determination of the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the twenty (20) working-day period for deciding an appeal, or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review. The requester may be asked to consider delaying resort to his right to judicial review until the date on which the determination on his appeal is expected to be dispatched.

(d) *Form of decision.* The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the Freedom of Information Act Officer shall immediately make the records available or instruct the appropriate bureau official to make them immediately available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of his right to obtain judicial review in the U.S. District Court for the district in which the withheld records are located, or in which the requester resides or has his principal place of business or in the U.S. District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.

(e) *Distribution of copies.* Copies of final determinations issued by the Commission shall be provided to the Commission's legal counsel.

§ 700.251 Fees.

(a) *Services for which fees may be charged.* (1) Unless waived pursuant to the provisions of paragraph (c) of this section, user fees shall be charged for document search and duplication costs incurred in responding to requests for records. User fees also shall be charged for the formal certification of verification attached to authenticated copies of records under the seal of the Commission.

(2) Unless waived or reduced pursuant to paragraph (c) of this section, user fees shall be charged in accordance with the schedule of charges contained in the Commission's Management Manual.

(b) *Services for which fees may not be charged.* No fee may be charged for any services required by the Freedom of Information Act to be performed in responding to a request for records other than those services for which fees may be charged under paragraph (a) of this section. Services for which no fees may be charged include, but are not limited to,

(1) Examining requested records to determine whether they are exempt from mandatory disclosure or whether,

even if exempt, they should nevertheless be made available in whole or part,

(2) Deleting exempt matter from records so that the remaining portions of the records may be made available,

(3) Monitoring a requester's inspection of agency records made available to him for inspection, and

(4) Resolving legal and policy issues affecting access to requested records.

(c) *Waiver or reduction of fees.* (1) Fees otherwise chargeable for document search and duplication costs incurred in responding to requests for records may be waived or reduced, as appropriate, if the official making the records available determines that furnishing the records can be considered as primarily benefiting the public as opposed to the requester.

(2) Fees otherwise applicable for document research and duplication costs incurred in responding to requests may be waived and not charged if the request involves:

(i) Furnishing unauthenticated copies of any documents reproduced for gratuitous distribution;

(ii) Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Commission;

(iii) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held.

(3) Fees otherwise chargeable for document search and duplication costs incurred in responding to requests may be waived or reduced if the cost of collecting the fee would exceed the amount of the fee or if the request involves:

(i) Furnishing records to press, radio and television representatives for dissemination through the media to the general public;

(ii) Furnishing records to donors with respect to their gifts;

(iii) Furnishing records to individuals or private non-profit organizations having an official voluntary or cooperative relationship with the Commission to assist the individual or organization in its work with the Commission;

(iv) Furnishing records to state, local and tribal governments and public

international organizations when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Commission and to do so will help to accomplish the work of the Commission;

(v) Furnishing records when to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the Commission's fee for the service would be included in a billing against the Commission);

(vi) Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Commission employees);

(vii) Furnishing one copy of a record in order to assist the requester to obtain financial benefits to which he is entitled (e.g., veterans or their dependents, employees with Government employee compensation claims or persons insured by the Government).

(d) *Notice of anticipated fees and prepayment.* (1) Where it is anticipated that fees chargeable under this section may amount to more than \$25.00 and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the request shall be deemed not to have been received for purposes of the time limits established by § 700.245 until the requester is advised of the fees which are anticipated and has agreed to pay these fees. Advice to requesters with respect to anticipated fees shall be provided promptly.

(2) The appropriate cases, advance payment of fees may be required before requested records are made available to the requester.

(3) A notice of anticipated fees or notice of request for advance payment shall extend an offer to the requester to confer with appropriate personnel in an attempt to reformulate the request in a manner which will reduce the anticipated fees and meet the needs of the requester.

(e) *Form of payment.* Payment of fees shall be made by check or money order payable to the Navajo-Hopi Indian Relocation Commission. The term United States or the initials "U.S." shall not be included on the check or money

order. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check.

Subpart K—Privacy Act

§ 700.255 Purpose and scope.

This subpart contains the regulations of the Navajo and Hopi Indian Relocation Commission implementing section 3 of the Privacy Act.

§ 700.257 Definitions.

(a) *Act.* As used in this subpart, "Act" means section 3 of the Privacy Act, 5 U.S.C. 552a.

(b) *Individual.* As used in this subpart, "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain.* As used in this subpart, the term "maintain" includes maintain, collect, use or disseminate.

(d) *Record.* As used in this subpart, "record" means any item, collection, or grouping of information about an individual that is maintained by the Commission including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(e) *System of records.* As used in this subpart, "System of records" means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) *Medical records.* As used in this subpart, "medical records" means records which relate to the identification, prevention, cure or alleviation of any disease, illness or injury including psychological disorders, alcoholism and drug addiction.

(g) *Civil Service Commission personnel records.* As used in this subpart, "Civil Service Commission personnel records" means records maintained for the Civil Service Commission by the Commission and used for personnel management programs or processes such as

staffing, employee development, retirement, and grievances and appeals.

(h) *Statistical records.* As used in this subpart, "statistical records" means records in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

(i) *Routine use.* As used in this subpart, "routine use" means a use of a record for a purpose which is compatible with the purpose for which it was collected.

(j) *System notice.* As used in this subpart, "system notice" means the notice describing a system of records required by 5 U.S.C. 552a(e)(4) to be published annually in the FEDERAL REGISTER.

(k) *System manager.* As used in this subpart, "system manager" means the official designated in a system notice as having administrative responsibility for a system of records.

(l) *Commission Privacy Act Officer.* As used in the subpart, "Commission Privacy Act Officer" means the official in the Commission charged with responsibility for assisting the Commission in carrying out the functions which he is assigned in this subpart and for coordinating the activities of the divisions of the Commission in carrying out the functions which they are assigned in this subpart.

§ 700.259 Records subject to Privacy Act.

The Privacy Act applies to all "records" as that term is defined in § 700.257(d), which the Commission maintains in a "system of records," as that term is defined in § 700.257(e).

§ 700.261 Standards for maintenance of records subject to the Act.

(a) *Content of records.* Records subject to the Privacy Act shall contain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order of the President.

(b) *Standards of accuracy.* Records subject to the Privacy Act which are used in making any determination about any individual shall be maintained with such accuracy, relevance,

timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making the determination.

(c) *Collection of information.* (1) Information which may be used in making determination about an individual's rights, benefits, and privileges under Federal programs shall, to the greatest extent practicable, be collected directly from that individual.

(2) In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following factors, among others may be considered:

(i) Whether the nature of the information sought is such that it can only be obtained from a third party;

(ii) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(iii) Whether there is a risk that information collected from third parties if inaccurate, could result in an adverse determination to the individual concerned;

(iv) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(v) Whether provisions can be made for verification, by the individual, of information collected from third parties.

(d) *Advice to individual concerning uses of information.* (1) Each individual who is asked to supply information about himself which will be added to a system of records shall be informed of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information.

(2) At a minimum, the notice to the individual must state;

(i) The authority (whether granted by statute or Executive Order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purpose or purposes for which the information is intended to be used;

(iii) The routine uses which may be made of the information; and

(iv) The effects on him, if any, of not providing all or any part of the requested information.

(3)(i) When information is collected on a standard form, the notice to the individual shall be on the form or on a tear-off sheet attached to the form or on a separate sheet, whichever is most practical.

(ii) When information is collected by an interviewer, the interviewer shall provide the individual with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests that a copy be mailed to him.

(iii) An individual may be asked to acknowledge, in writing, that he has been afforded the notice required by this section.

(e) *Records concerning activity protected by the First Amendment.* No record may be maintained describing how any individual exercises rights guaranteed by the First Amendment to the Constitution unless (1) expressly authorized by statute or by the individual about whom the record is maintained or (2) pertinent to and within the scope of an authorized law enforcement activity.

§ 700.263 Assuring integrity of records.

(a) *Statutory requirement.* The Privacy Act requires that records subject to the Act be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained, 5 U.S.C. 522a(e)(10).

(b) *Records maintained in manual form.* When maintained in manual form, records subject to the Privacy Act shall be maintained, at a minimum, subject to the following safeguards, or safeguards affording comparable protection:

(1) Areas in which the records are maintained or regularly used shall be posted with an appropriate warning

stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of § 700.265 and state that the Privacy Act contains a criminal penalty for the unauthorized disclosure of records to which it applies.

(2) During working hours, (i) the area in which the records are maintained or regularly used shall be occupied by authorized personnel or (ii) access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(c) *Records maintained in computerized form.* When maintained in computerized form, records subject to the Privacy Act shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standards booklet "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements thereto, which are adequate and appropriate to assuring the integrity of records in the system.

(d) *Civil Service Commission personnel records.* A system of records made up of Civil Service Commission personnel records shall be maintained under the security requirements set out in 5 CFR 293.108.

§ 700.265 Conduct of employees.

(a) *Handling of records subject to the Act.* Employees whose duties require handling of records subject to the Privacy Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(b) *Disclosure of records.* No employee of the Commission may disclose records subject to the Privacy Act unless disclosure is permitted under § 700.267 or is to the individual to whom the record pertains.

(c) *Alteration of records.* No employee of the Commission may alter or destroy a record subject to the Privacy Act unless (1) such alteration or destruction is properly undertaken in the course of the employee's regular duties or (2) such alteration or destruction is required by a decision under §§ 700.287–

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700.295 or the decision of a court of competent jurisdiction.

§ 700.267 Disclosure of records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) To those officers or employees of the Commission who have a need for the record in the performance of their duties; or

(2) Required by the Freedom of Information Act, 5 U.S.C. 522.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) For a routine use as defined in § 700.257(i) which has been described in a systems notice published in the FEDERAL REGISTER;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 U.S. Code.

(3) To a recipient who has provided the System Manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality

has made a written request to the Department specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(9) Pursuant to the order of a court of competent jurisdiction.

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to assure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information request made under subpart B of this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Commission indicating that the record may not be fully accurate, complete, or timely.

§ 700.269 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 700.267(c), an accounting shall be made.

(2) The accounting shall record (i) the date, nature, and purpose of each disclosure of a record to any person or to another agency and (ii) the name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 700.267(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at his request.

(2) An individual desiring access to accountings of disclosures of a record pertaining to him shall submit his request by following the procedures of § 700.277.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 700.267(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

§ 700.271 Requests for notification of existence of records: Submission.

(a) *Submission of requests.* (1)(i) An individual desiring to determine under the Privacy Act whether a system of records contains records pertaining to him shall address his inquiry to the system manager having responsibility for the system unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires that an individual contact more than two officials concerning the existence of records in the system, an individual desiring to determine whether the system contains records pertaining to him may contact the system manager for assistance in determining which official is most likely to be in possession of records pertaining to that individual.

(2) If an individual desires to determine whether records pertaining to him are maintained in two or more systems, he shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT INQUIRY."

(3) The request shall state that the individual is seeking information con-

cerning records pertaining to himself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) If an individual has reason to believe that information pertaining to him or her may be filed under a name other than the name he or she is currently using (e.g., a maiden name), he or she shall include this information in the request.

§ 700.273 Request for notification of existence of records: Action on.

(a) *Decisions on request.* (1) An individual inquiring to determine whether a system of records contains records pertaining to him shall be advised within ten (10) days (excepting Saturdays, Sundays and legal public holidays) whether or not the system does contain records pertaining to him unless (i) the records were compiled in reasonable anticipation of a civil action or proceeding or (ii) the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking.

(2) If the records were compiled in reasonable anticipation of a civil action or proceeding or the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking, the individual will be promptly notified that his is not entitled to notification of whether the system contains records pertaining to him.

(b) *Authority to deny requests.* A decision to deny a request for notification of the existence of records shall be made by the Privacy Act Officer.

(c) *Form of decision.* (1) No particular form is required for a decision informing an individual whether or not a system of records contains records pertaining to him.

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to him shall be in writing and shall state the basis for denial of the request and shall advise the individual that he may appeal the declination to the Executive Director pursuant to § 700.285 by writing to the Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona

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86002, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

§ 700.275 Requests for access to records.

The Privacy Act permits an individual, upon his request, to gain access to his record or to any information pertaining to him which is contained in a system and to review the record and have a copy made of all or any portion thereof in a form comprehensive to him, 5 U.S.C. 552a(d)(1). A request for access shall be submitted in accordance with the procedures in this subpart.

§ 700.277 Requests for access to records: Submission.

(a) *Submission of requests.* (1) Requests for access to records shall be submitted to the system manager having responsibility for the system in which the records are maintained unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) If an individual desires access to records maintained in two or more separate systems, he shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT REQUEST FOR ACCESS."

(3) The request shall specify whether the requester seeks all of the records contained in the system which relate to him or only some portion thereof. If the requester seeks only a portion of the records which relate to him, the request shall reasonably describe the specific records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will

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be treated as a request to inspect the requested records. Requesters are further notified that under § 700.279(d) the failure to state willingness to pay fees as high as are anticipated by the Commission will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the request of the deficiency in the request.

§ 700.279 Requests for access to records: Initial decision.

(a) *Decisions on requests.* A request made under this subpart for access to a record shall be granted promptly unless (1) the record was compiled in reasonable anticipation of a civil action or proceeding or (2) the record is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rule-making.

(b) *Authority to deny requests.* A decision to deny a request for access under this subpart shall be made by the Privacy Act Officer.

(c) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 700.279(d), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall state the basis for denial of the request. The decision shall also contain a statement that the denial may be appealed to the Executive Director pursuant to § 700.281 by writing to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal

holidays excepted) of the date of the decision.

(d) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 700.271.

(2) Fees for copying a record in response to a request made under § 700.271 shall be charged in accordance with the schedule of charges contained in the Commission's Management Manual, unless the official responsible for processing the request determines that, in his/her opinion, reduction or waiver of fees is appropriate.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated he/she is willing to pay, the official processing the request shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

§ 700.281 Requests for notification of existence of records and for access to records: Appeals.

(a) *Right of appeal.* If an individual has been notified that he/she is not entitled to notification of whether a system of records contains records pertaining to him or has been denied access, in whole or part, to a requested record that individual may appeal to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received by the Privacy Act Officer no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the initial decision on a request.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the initial decision of the request.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial request and the decision on the request.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the initial request to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002.

(d) *Action on appeals.* (1) Appeals from decisions on initial requests made pursuant to §§ 700.273 and 700.277 shall be decided for the Commission by the Executive Director after consultation with the Commission's legal counsel.

(2) The decision on an appeal shall be in writing and shall state the basis for the decision.

§ 700.283 Requests for access to records: Special situations.

(a) *Medical records.* (1) Medical records shall be disclosed to the individual to whom they pertain unless it is determined, in consultation with a medical doctor, that disclosure should be made to a medical doctor of the individual's choosing.

(2) If it is determined that disclosure of medical records directly to the individual to whom they pertain could have an adverse effect on that individual, the individual may designate a medical doctor to receive the records and the records will be disclosed to that doctor.

(b) *Inspection in presence of third party.* (1) An individual wishing to inspect records pertaining to him which have been opened for his inspection may, during the inspection, be accompanied by a person of his own choosing.

(2) When such a procedure is deemed appropriate, the individual to whom the records pertain may be required to furnish a written statement authorizing discussion of his record in the accompanying person's presence.

§ 700.285 Amendment of records.

The Privacy Act permits an individual to request amendment of a record pertaining to him if he believes the record is not accurate, relevant, timely or complete, 5 U.S.C. 552a(d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this subpart.

§ 700.287 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment.* (1) A request for amendment of a

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record shall be submitted to the system manager for the system of records containing the record unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted to each system manager.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing and shall specifically identify the record whose amendment is sought.

(2) The petition shall state, in detail, the reasons why the petitioner believes the record, or the portion thereof objectionable to him, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(3) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting of the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

§ 700.289 Petitions for amendment: Processing and initial decision.

(a) *Decisions on petitions.* In reviewing a record in response to a petition for amendment, the accuracy, relevance, timeliness and completeness of the record shall be assessed against the criteria set out in § 700.261. In addition, personnel records shall be assessed against the criteria for determining record quality published in the Federal Personnel Manual and the Commission Manual addition thereto.

(b) *Authority to decide.* An initial decision on a petition for amendment may be made only by the Privacy Act Officer.

(c) *Acknowledgement of receipt.* Unless processing of a petition is completed within ten (10) days (Saturdays, Sundays and public legal holidays excepted), the receipt of the petition for

amendment shall be acknowledged in writing by the system manager to whom it is directed.

(d) *Inadequate petitions.* (1) If a petition does not meet the requirements of § 700.287, the petitioner shall be so advised and shall be told what additional information must be submitted to meet the requirements of § 700.287.

(2) If the petitioner fails to submit the additional information within a reasonable time, his petition may be rejected. The rejection shall be in writing and shall meet the requirements of paragraph (e) of this section.

(e) *Form of decision.* (1) A decision on a petition for amendment shall be in writing and shall state concisely the basis for the decision.

(2) If the petitioned for amendment is rejected, in whole or part, the decision shall advise the petitioner that the rejection may be appealed to the Executive Director by writing to the Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

(f) *Implementation of initial decision.* If a petitioned for amendment is accepted, in whole or part, the appropriate Commission Division maintaining the record shall:

(1) Correct the record accordingly and,

(2) Where an accounting of disclosures has been made pursuant to § 700.269 advise all previous recipients of the record that the correction was made and the substance of the correction.

§ 700.291 Petitions for amendment: Time limits for processing.

(a) *Acknowledgement of receipt.* The acknowledgement of receipt of a petition required by § 700.289(c) shall be dispatched not later than ten (10) days (Saturdays, Sundays and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record, unless a decision on the petition has been previously dispatched.

(b) *Decision on petition.* A petition for amendment shall be processed promptly. A determination whether to accept or reject the petitioned for amendment shall be made within no more than thirty (30) days (Saturdays, Sundays, and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record.

(c) *Suspension of time limit.* The thirty (30) day time limit for a decision on a petition shall be suspended if it is necessary to notify the petitioner, pursuant to § 700.289(d) that additional information in support of the petition is required. Running of the thirty (30) day time limit shall resume on receipt of the additional information by the system manager responsible for the system containing the challenged record.

(d) *Extensions of time.* (1) The thirty (30) day time limit for a decision on a petition may be extended if the official responsible for making a decision on the petition determines that an extension is necessary for one of the following reasons:

(i) A decision on the petition requires analysis of voluminous record or records;

(ii) Some or all of the challenged records must be collected from facilities other than the facility at which the official responsible for making the decision is located.

(2) If the official responsible for making a decision on the petition determines that an extension is necessary, he shall promptly inform the petitioner of the extension and the date on which a decision is expected to be dispatched.

§ 700.293 Petitions for amendment: Appeals.

(a) *Right of appeal.* Where a petitioned-for amendment has been rejected, in whole or part, the individual submitting the petition may appeal the denial to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the decision on a petition.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received

within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision on a petition.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial petition and the decision on that petition.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the petition to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002.

§ 700.295 Petitions for amendment: Action on appeals.

(a) *Authority.* Appeals from decisions on initial petitions for amendment shall be decided for the Commission by the Executive Director after consultation with the Commission's legal counsel unless the record challenged by the initial petition is a Civil Service Commission personnel record maintained for the Commission by the Navajo and Hopi Indian Relocation Commission. Appeals from decisions on initial petitions requesting amendment of Civil Service Commission records maintained for the Commission by the Navajo and Hopi Indian Relocation Commission shall be transmitted by the Executive Director, for decision.

(b) *Time limit.* (1) A final determination on any appeal shall be made within thirty (30) days (Saturdays, Sundays and legal public holidays excepted) after receipt of the appeal.

(2) The thirty (30) day period for decision on an appeal may be extended, for good cause shown, by the Commission. If the thirty (30) day period is extended, the individual submitting the appeal shall be notified of the extension and of the date on which a determination on the appeal is expected to be dispatched.

(c) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination.

(2) If the determination upholds, in whole or part, the initial decision rejecting the petitioned for amendment, the determination shall also advise the individual submitting the appeal:

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(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency;

(ii) Of the procedure established by § 700.297 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Commission, a brief statement by the Commission summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Commission's refusal to amend the record.

(3) If the determination reverses, in whole or in part, the initial decision rejecting the petitioned for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

(ii) If an accounting of disclosure has been made, advise all previous recipients of the record which was amended of the amendment and its substance.

§ 700.297 Statements of disagreement.

(a) *Filing of statements.* If the determination of the Executive Director under § 700.295 rejects in whole or part, a petitioned for amendment, the individual submitting the petition may file with the system manager for the system containing the challenged record, a concise written statement setting forth the reasons for his disagreement with the determination of the Department.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section occurring after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the Com-

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mission for not making the requested amendments may also be provided to recipient.

Subpart L—Determination of Eligibility, Hearing and Administrative Review (Appeals)

SOURCE: 46 FR 46801, Sept. 22, 1981; 47 FR 15774, Apr. 13, 1982, unless otherwise noted.

§ 700.301 Definitions.

(a) Certifying Officer, as used in this subpart, means that member of the Commission staff who certifies eligibility for relocation assistance benefits and/or for life estate leases.

(b) An aggrieved person, as used in this subpart, means a person who has been denied any relocation assistance benefits for which he/she has applied.

§ 700.303 Initial Commission determinations.

(a) Initial Commission Determination concerning individual eligibility or benefits for any person who has filed a claim for benefits or for granting of life estate leases shall be made by the Certifying Officer. The Determination shall include the amount, if any, to which the individual is entitled, and shall state the reasons therefor. Such Determination shall be communicated to the Applicant by certified letter or in person by Commission staff. A record of personal notice shall be maintained by the Commission.

(b) An explanatory conference shall be scheduled by and with the Certifying Officer, if requested by the Applicant or the Certifying Officer, within thirty days of the communication of the Determination; the right to a hearing is not dependent on the holding of such a conference. The Certifying Officer may reverse, amend, or leave standing the Initial Determination as a result of such conference; *Provided, however,* his/her decision shall be communicated in writing to the Applicant by certified letter or in person by Commission staff within five days after such conference.

(c) Communications of Determinations to the Applicant as provided for in § 700.303(a) shall include an explanation of the availability of grievance

procedures, including hearings and representation of counsel and the fact that a hearing must be requested within 30 (thirty) days of receipt of the determination.

(d) No decision which at the time of its rendition is subject to appeal to the Commission shall be considered final agency action subject to judicial review under 5 U.S.C. 704, *Provided* that in the event of a whole or partial denial, no benefits shall be paid unless and until said Determination is reversed or modified as provided for herein.

§ 700.305 Availability of hearings.

All persons aggrieved by Initial Commission Determinations concerning eligibility, benefits, or for granting of life estate leases may have a Hearing to present evidence and argument concerning the Determination. Parties seeking such relief from the Commission's Initial Determination shall be known as "Applicants." When multiple Applicants claim interest in one benefit, determination, or question of eligibility, their hearings may be consolidated at the Presiding Officer's discretion.

§ 700.307 Request for hearings.

Hearing requests shall be made in person or by letter and must be received by the Commission within thirty days after the notice letter was received, the personal notice was given, or if an explanatory conference is held, after the decision of the Certifying Officer. The request shall also contain a specific statement indicating the basis for the request.

§ 700.309 Presiding officers.

The hearing shall be presided over and conducted by one of the Commissioners appointed pursuant to 25 U.S.C. 640d-11(b) or by such other person as the Commission may designate.

§ 700.311 Hearing scheduling and documents.

(a) Hearings shall be held as scheduled by the Presiding Officer.

(b) Notice of the hearing shall be communicated in writing to the applicant at least thirty days prior to the

hearing and shall include the time, date, place, and nature of the hearing.

(c) Written notice of the Applicant's objections, if any, to the time, date, or place fixed for the hearing must be filed with the Presiding Officer at least five days before the date set for the hearing. Such notice of objections shall state the reasons therefor and suggested alternatives. Discretion as to any changes in the date, time, or place of the hearing lies entirely with the Presiding Officer, *Provided*, that the 30 (thirty) day notice period as provided in paragraph (b) of this section shall be observed unless waived in writing by the applicant or his representative.

(d) All hearings shall be held within thirty days after Commission receipt of the applicant's request therefor unless this limit is extended by the Presiding Officer.

(e) All hearings shall be conducted at the Commission office in Flagstaff, Arizona, unless otherwise designated by the Presiding Officer.

(f) All time periods in this regulation include Saturdays, Sundays and holidays. If any time period would end on a Saturday, Sunday, or holiday, it will be extended to the next consecutive day which is not a Saturday, Sunday, or holiday.

(g) A copy of each document filed in a proceeding under this section must be filed with the Commission and may be served by the filing party by mail on any other party or parties in the case. In all cases where a party is represented by an attorney or representative, such attorney or representative will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney or representative, which service shall suffice as if made upon the Applicant. Where a party is represented by more than one attorney or representative, service upon one of the attorneys or representatives shall be sufficient.

(h) Hearings will be recorded verbatim and transcripts thereof shall be made when requested by any parties; costs of transcripts shall be borne by the requesting parties unless waived according to § 700.313(a)(5).

(i) Applicants may be represented by a licensed attorney or by an advocate

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licensed to practice in any Hopi or Navajo Tribal Court.

§ 700.313 Evidence and procedure.

(a) At the hearing and taking of evidence the Applicant shall have an opportunity to:

(1) Submit and have considered facts, witnesses, arguments, offers of settlement, or proposals of adjustment;

(2) Be represented by a lawyer or other representative as provided herein;

(3) Have produced Commission evidence relative to the determination, *Provided*, that the scope of pre-hearing discovery of evidence shall be limited to relevant matters as determined by the Presiding Officer;

(4) Examine and cross-examine witnesses;

(5) Receive a transcript of the hearing on request and upon payment of appropriate Commission fees as published by the Commission, which may be waived in cases of indigency.

(b) The Presiding Officer is empowered to:

(1) Administer oaths and affirmations;

(2) Rule on offers of proof;

(3) Receive relevant evidence;

(4) Take depositions or have depositions taken when the ends of justice would be served and to permit other pre-hearing discovery within his/her discretion;

(5) Regulate the course and conduct of the hearings; including pre-hearing procedures;

(6) Hold pre-hearing or post-hearing conferences for the settlement or simplification of the issues;

(7) Dispose of procedural requests or similar matters;

(8) Make a record of the proceedings;

(9) Hold the record open for submission of evidence no longer than fourteen days after completion of the hearings;

(10) Make or recommend a decision in the case based upon evidence, testimony, and argument presented;

(11) Enforce the provisions of 5 USCA section 557(d) in the event of a violation thereof;

(12) Issue subpoenas authorized by law; and

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(13) Extend any time period of this subpart upon his/her own motion or upon motion of the applicant, for good cause shown.

§ 700.315 Post-hearing briefs.

Applicants may submit post-hearing briefs or written comments to the Presiding Officer within fourteen days after conclusion of the hearings. In the event of multiple applicants or parties to a hearing, such briefs shall be served on all such applicants by the applicant submitting the brief.

§ 700.317 Presiding officer decisions.

(a) The Presiding Officer shall submit to the Commission a written decision based upon the evidence and argument presented, within *sixty* days, not including any period the record is held open, if any, after conclusion of the hearing, unless otherwise extended by the Presiding Officer.

(b) Copies of the Presiding Officer's decision shall be mailed to the Applicant. The Applicant may submit briefs or other written argument to the Commission within fourteen days of the date the Presiding Officer's determination was mailed to the Applicant.

§ 700.319 Final agency action.

Within 30 (thirty) days after receipt of the Presiding Officer's decision, the Commission shall affirm or reverse the decision and issue its final agency action upon the application in writing; *Provided*, that in the event one Commissioner sits as the Presiding Officer, the final agency action shall be determined by the remaining Commissioners and such other person as they may designate who did not so preside over the hearing. Such decisions shall be communicated in writing to the Applicant by certified mail.

§ 700.321 Direct appeal to Commissioners.

Commission determinations concerning issues other than individual eligibility or benefits which do not require a hearing may be appealed directly to the Commission in writing. The Commission decision will constitute final agency action on such issues.

Subpart M—Life Estate Leases

AUTHORITY: Sec. 30(b), Pub. L. 96-305, 94 Stat. 929 (25 U.S.C. 640d).

SOURCE: 46 FR 27921, May 22, 1981; 47 FR 15774, Apr. 13, 1982, unless otherwise noted.

§ 700.331 Application for life estate leases.

The following standards and procedures shall govern the application for life estate leases:

(a) *Filing of application.* Applications for life estate leases shall be filed at the Commission's office in Flagstaff, AZ, not later than July 1, 1981, unless extended for good cause. Application should be made on an approved Commission form known as "Application for Life Estate Lease" and should contain the following information:

(1) Name, address, birthdate, social security number, census number, spouse, and date of marriage, if married. The head of household who applies for a life estate lease shall be known as the "applicant".

(2) Applicant's Quad Map location in the Former Joint Use Area.

(3) Information listing any other places of Applicant's residence since December 22, 1974.

(4) Name, birthdate, census number, and social security number, if any, of the applicant's minor dependent children.

(5) A statement by the applicant setting forth the nature of the applicant's disability, if any.

(6) Applications should be accompanied, wherever possible, with documentation such as Birth Certificates, Baptismal Records, Tribal Records, Family Census Cards, Marriage Certificates, Tax Returns, and such other documentation required by the Commission.

(b) *Extensions of time for filing of applications for life estate leases.* Extensions of time for filing of applications for life estate leases shall be governed by the following procedures:

(1) The Commission shall, on a case-by-case basis, determine whether good cause exists to warrant a time extension for the receipt of applications.

(2) Initial Commission determinations concerning the time extension for receipt of applications shall be made

by the Certification Officer. Any extensions granted shall be in writing and shall state the length of the extensions and the reasons therefore.

(3) In no event shall an extension be granted for more than eighty-nine (89) days after July 1, 1981.

(4) In the event an extension of time is denied or an application is refused for filing, the Certification Officer shall state the reasons therefore and such determination shall be communicated to the applicant by certified letter or in person by Commission staff.

(5) All persons aggrieved by initial Commission determination may have a hearing to present evidence and argument concerning the determination. Such hearings shall be requested and governed by the Commission's Hearings and Administrative Review Procedures contained in § 700.8 of the Commission's Operations and Relocation Procedures.

(6) For purpose of this subsection, "good cause" shall be defined as follows:

(i) Lack of actual notice.

(ii) Lack of transportation or physical incapacity preventing timely filing.

(iii) Acts of God.

(iv) Such other facts or reasons deemed sufficient in the discretion of the Commission.

§ 700.333 Determination of disability.

The Commission shall determine disability pursuant to the following:

(a) An applicant shall be considered to be disabled if he/she is unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. A physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(b) Each applicant who claims entitlement to a life estate lease by virtue of a disability shall be examined by a physician selected by the Commission

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or one selected by the applicant and approved by the Commission. The reasonable costs of such examinations shall be paid by the Commission. The examining physician shall submit a report of his/her examination to the rating physician who shall be a physician selected by the Commission. The rating physician shall submit to the Commission a report stating his/her opinion as to whether or not the applicant is at least 50% (fifty percent) disabled and if so, the percent of disability. In addition, the rating physician shall state in his/her report the conditions or conditions of the applicant upon which the rating is based.

(c) In performing examinations and in making ratings, the physician shall follow the procedures and adopt the standards set forth in subpart I—Determination of Disability or Blindness, of the Social Security Administration, contained in title 20, Code of Federal Regulations, §§416.901 through 416.985, including the appendices, etc., to the extent that such procedures and standards are appropriate to this examination and rating.

(d) In making its determination as to the disability and the percentage thereof of an applicant who claims disability, the Commission shall consider the report of the rating physician and such other matters as the Commission deems relevant.

§ 700.335 Grouping and granting of applications for life estate leases.

Upon receipt of applications filed pursuant to this section, the Commission shall group and award life estate leases in the following manner:

(a) Applicants who are determined to be at least 50% (fifty percent) disabled as certified by a physician approved by the Commission. Such applicants shall be ranked in the order of the severity of their disability.

(b) Applicants who are not at least 50% (fifty percent) disabled shall be ranked in order of their age with the oldest listed first and the youngest listed last; provided that, if any applicant physically resides in Quarter Quad Numbers 78 NW, 77NE, 55SW, or 54 SE, as designated on the Quarter Quad Maps of the Former Joint Use Area prepared by the Bureau of Indian Affairs

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Field Administrative Office, such applicant shall be given priority over another applicant of equal age.

(c) Applicants who did not, as of December 22, 1974, and continuously thereafter, maintain a separate place of abode and actually remain domiciled on Hopi Partitioned Lands, and who, but for this subsection would be required to relocate, shall be rejected by the Commission.

(d) Applicants who were not at least forty-nine (49) years of age on December 22, 1974, or are not at least 50% (fifty percent) disabled shall also be rejected by the Commission.

(e) The Commission shall award life estate leases to not more than one hundred and twenty (120) Navajo applicants with first priority being given to applicants listed pursuant to § 700.335(a) and the next priority being given to applicants listed pursuant to § 700.335(b), in order of such listing.

(f) The Commission shall award life estate leases to not more than ten (10) Hopi applicants with first priority being given to applicants listed pursuant to § 700.335(a) and the next priority being given to applicants listed pursuant to § 700.335(b) in order of such listing except that the portion of § 700.335(b) concerning residency in Quarter Quad Numbers 78 NW, 77NE, 77NW, 55 SW, 54SE, etc., shall not apply to Hopi applicants.

§ 700.337 Establishment of boundaries of life estate leases.

(a) Prior to the issuance of a life estate lease, the Commission shall, after consultation with the Tribe upon whose land the life estate lease will be located, establish the actual configuration, shape and boundaries of the land area of the life estate lease. The present residence of the life tenant shall be within the boundaries of the life estate lease and the area of the life estate lease shall not exceed ninety (90) acres.

(b) The following factors will be considered in establishing the configuration, shape, and boundaries of a life estate lease:

(1) The location of the present residence of the applicant and the traditional land use area associated with such residence.

(2) The topography and soil conditions of the land in the immediate vicinity of the applicant's present residence.

(3) The location of the nearest source of water.

(4) The proximity of roads.

(5) Such other factors may be necessary or appropriate.

§ 700.339 Residency on life estate leases.

(a) No person may reside on a life estate lease other than the life tenant, his or her spouse, and minor dependents and such persons who are necessarily present, as determined by the Commission, to provide for the care of the life tenant.

(b) In determining who is necessarily present for the care of the life tenant, the Commission shall consider the following criteria:

(1) The age of the life tenant.

(2) The nature and extent of the life tenant's disability, if any.

(3) The location of the life estate lease, including but not limited to, the following factors:

(i) Topography,

(ii) Proximity to water,

(iii) Proximity to fuel,

(iv) Proximity to shopping and medical services, and

(v) Any other factors deemed relevant to the Commission.

(4) The nature and extent of care to be provided to a disabled life tenant.

(5) Any other factors deemed relevant by the Commission.

(c) In the event it becomes necessary to change the identity of the person(s) or number of persons identified as necessarily present for the care of the life tenant, the life tenant shall make such request for change to the Commission. The Commission, upon review of the request, may grant an amended life estate lease to reflect the requested change.

§ 700.341 Access to life estate leases.

(a) Family members and other persons may enter upon the life estate lease premises for the purpose of visiting the life estate lease residents so long as such visit does not exceed thirty (30) consecutive days in any one visit or ninety (90) days total of all vis-

its within any lease year, except that grandchildren and their descendants who are not minor dependents of the life tenant and who have not attained the age of 18 (eighteen) years may visit for ninety (90) consecutive days in any lease year, the first of which shall commence on the date of issuance of the life estate lease. There shall be no limitation on visits which do not extend overnight.

(b) Visitors and residents shall use the existing road systems and access rights of way when traveling to and from life estate lease premises.

§ 700.343 Life estate leases.

The Commission shall execute a life estate lease to each applicant to whom a life estate lease is granted, which lease shall contain the following:

(a) The names of the persons entitled to reside on the life estate lease which shall be the life tenant, his or her spouse, and minor dependents and/or such persons who are necessarily present to provide for the care of life tenant.

(b) A description of the exterior boundaries of the land included in said lease.

(c) The term of the life estate lease which shall end either upon voluntary relinquishment or upon the death of the life tenant or his/her spouse, whichever occurs last.

(d) That the life tenant may feed not to exceed twenty-five (25) sheep units per year or equivalent livestock on the life estate lease premises.

(e) That no person may reside on a life estate lease other than the life tenant, his or her spouse, and minor dependents, and/or such persons who are necessarily present to provide for the care of the life tenant.

(f) That the Secretary of Interior shall pay, pursuant to 25 U.S.C. 640d-28(i), Pub. L. 96-305, section 30(i), on an annual basis, the fair market rental value of such life estate lease to the tribe to whom the lands leased were partitioned. Rental payments shall be made within thirty (30) days of the execution date of the life estate lease.

(g) That the life tenant may make reasonable improvements on the life estate lease which are related to the residence and agricultural purposes of

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the life tenancy as determined by the Commission. Such improvements:

(1) May include the renovation or replacement of existing dwelling structures and privies or outhouses so as to improve their utility, safety or level of modern utilities or amenities, but

(2) Shall not increase the number, size, or capacity of dwelling structures on the leased area except with the express written approval of the Commission based upon a showing of actual need, or to reasonably accommodate a resident care provider for whom there is not adequate existing residential capacity.

(3) May include not more than one shed or barn to be used in connection with livestock and/or agricultural activities permitted.

(4) May include one ceremonial hogan and one traditional ramada type structure.

(5) May include a garden of reasonable size.

(6) May include such other improvements as the Commission finds to be reasonable under the circumstances of each lease.

(h) That no person may visit on a life estate lease for more than thirty (30) consecutive days in any one visit or ninety (90) days total of all visits within any lease year the first of which shall commence on the date of issuance of the life estate lease, except that grandchildren and their descendants who are not minor dependents of the life tenant and who have not attained the age of eighteen (18) years may visit for ninety (90) consecutive days in any lease year. There shall be no limitation on visits which do not extend overnight.

(i) That said life tenant or his or her surviving spouse may relinquish said life estate lease at any time and may receive relocation benefits from the Secretary at the time of relinquishment as provided in 25 U.S.C. 640d-28(h), (Pub. L. 96-305, section 30(h)).

(j) The purposes for which the life estate lease may be used.

(k) The life estate tenure shall end by voluntary relinquishment, or at the death of the life tenant or the death of his or her spouse, whichever occurs last, all as provided in 25 U.S.C. 640d-28(g) (Pub. L. 96-305, section 30(g)).

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(l) No livestock shall be allowed in the lease area until the perimeter of the lease area is fenced.

(m) Such other terms and conditions deemed necessary or appropriate by the Commission.

Subpart N—Discretionary Funds

SOURCE: 47 FR 57916, Dec 29, 1982, unless otherwise noted.

§ 700.451 Purpose.

(a) The purpose of this subpart is to establish procedures for the submission, review and approval, and administration of applications for financial assistance from the discretionary fund established by Pub. L. 93-531, as amended.

(b) The purpose of the discretionary fund is to provide financial assistance to activities which will facilitate and expedite the relocation and resettlement of individuals under the Act and ease the hardship incurred by these individuals.

§ 700.453 Definitions.

(a) *Act* means Pub. L. 93-531 (88 Stat. 1712, 25 U.S.C. 640d), as amended.

(b) *Applicant* means with respect to this subpart, any applicant as defined under § 700.457(c) or § 700.459(b).

(c) *Business* means any lawful activity, except a nonprofit organization, that is—

(1) Conducted primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Conducted primarily for the sale of services to the public.

(d) *Commissioners* means the three Commissioners of the Navajo and Hopi Indian Relocation Commission.

(e) *In-kind contribution* means a noncash contribution as described in attachment F of OMB Circular A-102.

(f) *Local government* means a local unit of government including specifically a county, municipality, city, town, township, local public authority, special district, council of governments, and other regional or interstate entity, or any agency or instrumentality of a local government.

(g) *Nonprofit organization* means a corporation, partnership, individual, or other public or private entity that is engaged in a lawful business, professional, or instructional activity on a nonprofit basis and that has established its nonprofit status under applicable Federal, State, or Tribal law.

(h) *Related facilities* means any building or structure normally found in a community and includes but is not limited to water, sewer and electrical lines, community centers, health centers and clinics, roads, and business establishments.

(i) *Services* means activities relating to human development including, but not limited to, educational and job training, mental health counseling, health care, and technical assistance in business administration, agriculture, and home economics.

(j) *Tribe* means the Navajo Chapter or the Hopi Village.

(k) *Tribal subdivision* means a Navajo Chapter or a Hopi Village.

§ 700.455 Financial assistance.

(a) The Commission may provide financial assistance to applicants eligible under this subpart from funds available for any fiscal year.

(b) To obtain financial assistance, an applicant shall submit an application in accordance with § 700.463.

(c) The Commission may make funding decisions throughout the year as applications are approved. The Commission shall, to the extent possible, make funds available throughout the year for approved applications. Based upon the merit of applications received under this subpart, the Commission shall determine how funds available under this subpart shall be apportioned among the activities described in §§ 700.457 and 700.459.

§ 700.457 Assistance to match or pay 30% of grants, contracts or other expenditures.

(a) The purpose of applications for financial assistance under this section shall be to aid individuals subject to relocation under the Act and to assist the host communities, towns, cities, or other entities in adjusting to and meeting the needs of the relocatees. For this purpose, the discretionary fund

may be used to match or pay not to exceed 30% (thirty percent) of any grant, contract, or other expenditure of the Federal Government, State or local government, tribal government or chapter, or private organization for the benefit of the Navajo or Hopi Tribe, if the Commission determines that such grant, contract, or expenditure would significantly assist the Commission in carrying out its responsibility or assist either tribe in meeting the burdens imposed by this Act.

(b) An "other expenditure" under this subsection is defined as cooperative agreements, direct provision of services, or in-kind contributions. The Commission may match or pay not to exceed 30% (thirty percent) of another expenditure through a grant, contract, or cooperative agreement.

(c) Eligible applicants under this section for a grant, contract, or cooperative agreement are defined as States, local government, the Navajo and Hopi Tribes, tribal chapters or villages and profit and nonprofit organizations.

(d) Total Federal financial assistance under this section may reach 100% (one hundred percent) if the applicant receives 70% (seventy percent) Federal funding from Federal agencies other than the Commission.

(e) When another Federal agency is a primary source of financial assistance for an applicant, the Commission may, pursuant to an interagency agreement, transfer funds to the primary Federal agency providing financial assistance to the applicant.

(f) The Commission may, pursuant to an interagency agreement, transfer not to exceed 10% (ten percent) of the funds available under this subpart to another Federal agency directly assisting relocatees if such agency's activities would accomplish the purpose of paragraph (a) of this section. Financial assistance transferred to accomplish an eligible activity under paragraph (a) of this section may not exceed the funding limitation of paragraph (a) of this section.

(g) An applicant may apply for financial assistance under this section in accordance with the funding limitations described in paragraph (a) for the purpose of undertaking a technical feasibility study of a construction project

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or any major project with a total funding of over \$200,000 (two hundred thousand dollars) or any dollar amount which the Commission may prescribe at some future time.

§ 700.459 Assistance for demonstration projects and for provision of related facilities and services.

(a) The purpose of applications for financial assistance under this section shall be to aid individuals subject to relocation under the Act. For this purpose, the discretionary fund may be used by the Commission to engage or participate either directly through Federal activities, or by cooperative agreement, grant, or contract in demonstration efforts to employ innovative energy or other technologies in providing housing and related facilities and services in the relocation and resettlement of individuals under this Act.

(b) Applicants eligible under this section to receive grants, cooperative agreements or contracts are: states, local governments, the Navajo and Hopi Tribes, tribal chapters, profit and nonprofit organizations, and individuals.

(c) Applicants for assistance under this section may receive up to 100% (one hundred percent) project or program funding from the Commission, however, the Commission may specify whether applications for certain types of programs or projects under this section require matching funding from the applicant.

(d) Activities described in § 700.457(a) and paragraph (a) of this section may be provided by the Commission through in-house activities which receive financial assistance under this section.

(e) The Commission may, pursuant to an interagency agreement, transfer not to exceed 10% (ten percent) of the funds available under this subpart to another Federal agency directly assisting relocatees if such agency's activities would accomplish the purpose of §§ 700.457(a) and 700.459(a).

(f) An applicant may apply for financial assistance under this section for the purpose of undertaking a technical feasibility study of a construction project, or any major project with a

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total planned funding of over \$200,000, (two hundred thousand dollars) or any dollar amount which the Commission may prescribe at some future time.

§ 700.461 Method for soliciting applications.

(a) The Commission shall utilize two methods to solicit applications for funding:

(1) The Commission shall issue an annual announcement of the availability of funds for programs which will most effectively meet the purposes of § 700.457(a) or 700.459(a). Applicants submitting applications under this announcement must demonstrate that the proposed project or program will effectively facilitate and expedite the relocation effort of the Commission.

(2) As priority needs are identified by the Commission, calls shall be issued during the fiscal year for specific proposals. Requests for proposal shall define the need to be addressed and the scope of work required.

(b) The annual announcements of the availability of funds and periodic requests for proposals shall be issued through the Commerce Business Daily and media which has regional and local circulation. The Commission may fund approved applications through grant, contract, or direct provision of services, pursuant to Pub. L. 93–531, as amended.

§ 700.463 Requirements for applications.

(a) Applicants shall submit preapplications for funding assistance. The preapplication shall be due by the closing date published by the Commission, and shall consist of:

(1) Standard Form 424;

(2) A brief narrative not to exceed one page describing how the program or project will meet the priorities established by the Commission pursuant to § 700.457 or § 700.459.

(b) The Commission shall respond to each preapplication, and shall request each person submitting an acceptable preapplication to submit an application.

(c) Applications for financial assistance for a project or program may be submitted by the due date established by the Commission for a particular

funding cycle. Applications received after the due date will be considered for the next funding cycle, although the Commission, at its discretion, may select such a project for funding under the current cycle. An original and 5 (five) copies of each application must be submitted to the Commission. Applications shall be submitted on such forms as the Commission may prescribe in conformity with OMB circulars A102 or A110.

(d) Applications under § 700.457 for matching financial assistance not to exceed 30% of another expenditure, shall include:

(1) A detail sheet showing the sources of matching funds, including both cash and in-kind contributions, and documentation that the applicant has fulfilled all of the requirements of any Federal agency, state or local government or chapter, or private organization from which the financial assistance is also requested; and

(2) A narrative statement which includes an explanation of how the application would aid relocatees and assist the host communities, towns, cities, or other entities in adjusting to and meeting the needs of relocatees.

(e) Applications for financial assistance under § 700.459 must justify the proposed project or program as a demonstration effort in order to be eligible for 100% funding.

(f) Applications shall contain a statement of how the applicant plans to comply with the provisions of the Indian Self-Determination Act (25 U.S.C. 450e) and the Act of April 16, 1934 (48 Stat. 596) as amended (25 U.S.C. 452-457).

§ 700.465 Technical feasibility.

Unless required by a non-Commission source of financial assistance, completed plans and specifications are not required at the time an application is submitted for construction, technology, or another engineering project, however, an application for a construction, technology or another engineering project shall:

(a) Include sufficient information to determine the nature and scope of the project, its probable useful life, and a reasonable estimate of cost;

(b) Fully show that the applicant will follow design and performance criteria which conform to professionally recognized standards and which adequately define the technical capability of the project to serve current and foreseeable needs; and

(c) Justify any evidence or use of unorthodox design.

(d) Show that the applicant has a management plan for the facility which identifies probable sources of operating funds.

(e) An applicant who is awarded a grant under § 700.465 is required to submit completed plans and specifications for the construction, technology, or other engineering project prior to construction. The Commission shall review the completed plans and specifications for technical adequacy as part of its oversight function.

§ 700.467 Construction costs.

Construction costs and costs relating to construction such as machinery and equipment, architect/engineer services, and administrative services may be allowable as determined by the Commission.

§ 700.469 Unallowable program and project costs.

Costs for program or project operating expenses are not allowable except in the following cases—

(a) An application for an annual contract for services under § 700.457 or 700.459 may include necessary operating expenses; and

(b) An application for a demonstration effort under § 700.459 may include costs relating to the operation of the demonstration.

§ 700.471 Review and approval.

(a) Upon receipt of an application for financial assistance under this subpart, members of the Commission staff shall begin a preliminary review of the application with the intent of submitting a recommendation to the Commissioners of whether to accept or deny the application. The Commission staff may inform the applicant before its recommendation to the Commissioners, of any special problems or impediments which may result in a recommendation for disapproval; may

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offer any available technical assistance required to overcome such problems or impediments; and solicit the applicants written response.

(b) The Commission staff may solicit comments on an application from technical specialists, community groups and others, when such advice is needed to fully evaluate the application.

(c) The Commission staff shall forward the application with their recommendation to the Commissioners. The Commissioners may approve applications if they determine that:

(1) The application meets the requirements of this subpart;

(2) The application meets the intent of the Act;

(3) The application fully demonstrates that it will expedite the relocation and resettlement of individuals under the Act and ease the hardship incurred by these individuals or by the Tribes;

(4) The application is compatible with priorities identified by the Commission;

(5) The applicant can carry out the activities described in the application and can maintain proper financial controls on the activities for which financial assistance is requested;

(6) The applicant can and will comply with requirements for Indian preference in employment and training in connection with the administration of the grant, and preference to Indian organizations and Indian owned economic enterprises in the award of subcontracts or subgrants; and

(7) Funds are available.

(d) All applicants shall be notified in writing of the Commission's approval or disapproval of the grant applications.

§ 700.473 Administrative expenditures of the Commission.

The Commission may use funds in an amount not to exceed 5 percent of the funds authorized under this subpart for expenses relating to the administration of the discretionary fund including—

(a) Personnel, whose time is expended directly in support of such administration;

(b) Supplies which are expended directly in support of such administration;

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(c) Contracts, where the work performed is directly related to such administration;

(d) Printing, directly in support of such administration; and

(e) Travel, directly related to such administration.

§ 700.475 Reports.

Reports shall be furnished by any recipient of financial assistance under this subpart, in such manner as may be required by the Commission.

§ 700.477 Administration of financial assistance and recordkeeping requirements.

(a) A State or local government (except an institution of higher education or a hospital since they are governed by paragraph (b) of this section), or the Navajo or Hopi Tribe receiving a grant or cooperative agreement under this subpart shall comply with applicable law including the following requirements—

(1) Office of Management and Budget Circular A-102, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments" including attachment C describing recordkeeping requirements; and

(2) Federal Management Circular 74-4 5 CFR part 1310, entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments."

(b) A nonprofit organization, institution of higher education, or hospital receiving a grant or cooperative agreement under this subpart shall comply with applicable law including the following requirements—

(1) Office of Management and Budget Circular A-110, entitled "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" including attachment C describing recordkeeping requirements; and

(2) Office of Management and Budget Circular A-122, entitled "Cost Principles for Nonprofit Organizations."

(c) A profit organization receiving a grant or cooperative agreement under this subpart shall comply with applicable law including Federal Procurement Regulations (41 CFR subpart 1-15.2) for

determining the reasonableness, allowability, and allocability of costs.

(d) A profit organization, tribal chapter, or individual receiving a grant or cooperative agreement under this subpart shall—

(1) Follow sound and proper procedures for the administration of the financial assistance including any procedures established by the Commission; and

(2) Retain records as required by the Commission.

(e) A State, local government, the Navajo or Hopi Tribe, a tribal chapter or an individual receiving a contract under this subpart shall comply with applicable law including Federal Procurement Regulations (41 CFR parts 1-1 through 1-30). Recordkeeping requirements for contracts are described in §§ 1-3.814-2, 1-7.103-3, 1-7.103-18, 1-7.603-20, and 1-7.603-7 of the Federal Procurement Regulations.

(f) A State, local government, profit or nonprofit organization, or an individual residing off of the Navajo or Hopi reservation applying for a grant or cooperative agreement under this subpart shall comply with Office of Management and Budget Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects" unless exempted under Part I, section 8.b. of this circular.

(g) Recipients of financial assistance under this subpart shall comply with other procedures which the Commission may from time to time prescribe for the administration of financial assistance provided under this subpart.

(h) A state or local government, nonprofit organization, institution of higher education, hospital, profit organization or individual receiving a grant, subgrant, contract or subcontract under this part shall comply with the provisions of the Indian Self-Determination Act (25 U.S.C. 450e) and the Act of April 16, 1934 (48 Stat. 596) as amended (25 U.S.C. 452-457) which require that to the greatest extent feasible:

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organization and to Indian owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) (25 U.S.C. 1452).

§ 700.479 Administrative review.

(a) If the Commissioners determine that implementation of an application approved according to § 700.471 fails to meet the requirements of this subpart, the Commissioners shall give notice to the recipient of their intent to terminate or suspend financial assistance to the recipient.

(b) The Commission shall issue such notice in written form sent by registered mail, return receipt requested, which notice shall include a statement of the reasons for the findings referred to in paragraph (a) of this section, and an explanation whether any amendments or actions would result in compliance with grant terms and conditions.

(c) Any person whose approved financial assistance is terminated or suspended under paragraph (b) of this section may request a review of such action by the Commission. Such request for review shall be in writing and must be mailed or delivered to the Commission not later than thirty (30) days after receipt of the notice from the Commission by the applicant. Such request for review shall state the reasons for the request and shall include any additional matters not before the Commission which the applicant deems appropriate. The Commission may grant or deny a review at its discretion and shall inform the applicant of its decision in writing.

Subpart O—Employee Responsibility and Conduct

SOURCE: 47 FR 11858, Mar. 19, 1982, unless otherwise noted.

§ 700.501 Statement of purpose.

This part prescribes appropriate standards of conduct and responsibilities, financial disclosure reports, and rules of ethics in the conduct of Government business that are

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mandatory for all who serve with the Navajo and Hopi Indian Relocation Commission, and in order to implement the requirements of law, Executive Order 11222 and 5 CFR part 905. The rules promulgated by the Commission as essential to agency operations are in addition to the criminal laws and other laws governing conduct of Federal employees. Like the laws, they will be strictly interpreted and firmly enforced. Ignorance of these rules or laxity in observance or enforcement of them will not be condoned. They are the prime responsibility of all Commission personnel.

§ 700.503 Definitions.

(a) *Special Government Employee*: An officer or employee who has been employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis (18 U.S.C. 202(a)).

(b) *Employee*: Any officer or employee of the Commission who is not a special government employee.

(c) *Commission personnel*: All officers and employees of the Commission, including special Government employees.

(d) *Persons*: An individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization or institution.

(e) *Gratuity*: Any gift, honorarium, favor, entertainment, hospitality, transportation, loan, or any other tangible thing, and any other intangible benefit (i.e., discounts) given to or on behalf of Commission employees or their spouses or dependent children for which fair market value is not paid by the recipient or by the Government.

§ 700.505 Coverage.

The regulations contained in this part apply to all Commission personnel. Exceptions applicable to special Government employees and members of the Senior Executive Service are noted in the body of this part.

§ 700.507 Responsibilities.

(a) *Office of the Commission and Office of Executive Direction*. (1) The Chairman of the Commission shall prepare and

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submit to the Office of Personnel Management for approval, standards of employee conduct which implement requirements of law, Executive Order 11222 and provisions of 5 CFR part 905; and prescribe additional standards of ethical and other conduct and reporting requirements that are appropriate to the agency. After OPM approval, the Chairman shall submit the agency's regulations to the FEDERAL REGISTER for publication. These requirements also apply to any amendments to agency regulations.

(2) The Commissioners shall appoint a Designated Agency Ethics Official and Deputy Ethics Official in accordance with 5 CFR 738.202(b). Responsibilities of these officials are described below in § 735.15.

(3) The Executive Director shall ensure that the regulations published under this part are disseminated to all Commission personnel and that staff are familiar with and understand the standards of conduct and statutes governing conflicts of interest and post Federal employment restrictions.

(4) The Executive Director shall ensure that disciplinary or remedial action is taken in the case of all agency personnel who violate these standards or related laws and regulations, and against supervisors who fail to carry out their responsibilities in taking disciplinary or remedial action in such cases.

(b) *Managers and supervisors*. Managers and supervisors shall ensure that all Commission personnel under their supervision are familiar with and understand these regulations governing standards of conduct, conflict of interest, and referenced statutory restrictions, and adhere to them at all times. Issues and problems which cannot be resolved through the discussion process inherent in the supervisor-employee relationship shall be referred to the Designated Agency Ethics Official. Managers and supervisors shall ensure that disciplinary or remedial action is taken with all agency personnel who violate these regulations, and against subordinate supervisors who fail to carry out their responsibilities for effecting or recommending disciplinary or remedial action in these cases.

(c) *Employees.* All Commission personnel shall be familiar with the standards of conduct governed in this directive and the laws governing conflicts of interest and post employment restrictions, and shall comply with them. When in doubt as to the permissibility of an action under the terms of this directive, the employee shall not act without first consulting the immediate supervisor and as appropriate seeking the advice of the Designated Agency Ethics Official.

(d) *Office of Management Operations.* (1) The Office of Management Operations shall give each employee a copy of these regulations and shall conduct an oral briefing on their contents, within 30 days of approval. New personnel shall receive a copy and oral briefing promptly upon assuming their duties. Additions and amendments shall be similarly communicated upon approval.

(2) The Office shall conduct annual review sessions of these standards for all personnel.

(3) The Office shall provide the Designated Agency Ethics Official with necessary administrative and clerical staff support.

§ 700.509 Duties of the designated agency ethics official.

The Designated Agency Ethics Official shall coordinate and manage the agency's ethics program. The Deputy Ethics Official shall serve as alternate Agency Ethics Official in the absence of the Designated Agency Ethics Official, or upon his or her express delegation. Specific duties of the Officer include:

(a) *Liaison with Office of Government Ethics (OGE).* The Designated Agency Ethics Official shall establish and maintain close working relations with the OGE, and shall coordinate communications between the Commission and OGE through the Agency Liaison Division and Office of Ethics of the General Services Administration. If the Designated Agency Ethics Official receives a request which he or she believes should be answered by the Office of Government Ethics, a referral procedure is available. Requests for advisory opinions shall be submitted as specified in 5 CFR 738.304. The Designated Agen-

cy Ethics Official shall provide the OGE with records, reports and any other information which may be required under the Ethics in Government Act (Pub. L. 95-521, as amended) or requested by the OGE.

(b) *Review of statements.* The Designated Agency Ethics Official shall review the statements of employment and financial interest submitted by agency personnel assessing the application of conflict of interest laws and regulations to the information reported. When the review discloses a conflict, or the appearance of a conflict, between the private interests of an employee and the performance of his or her duties as a Commission employee, the Designated Agency Ethics Official shall bring the conflict to the attention of the employee, grant the individual an opportunity to explain the conflict, and attempt to resolve it. If the conflict is not resolved at this point, the Designated Agency Ethics Official shall forward a written report on the conflict to the Chairman of the Commission recommending appropriate action. In developing the recommendation the Designated Agency Ethics Official may consult, as appropriate, with the agency General Counsel and the GSA Ethics Office.

(c) *Education and counseling program.* The Designated Agency Ethics Official shall design and conduct an education and counseling program for supervisors and employees on all ethics and standards of conduct matters, including post-employment matters. Records shall be kept as appropriate on the advice rendered.

(d) *Administrative systems review.* The Designated Agency Ethics Official shall ensure that these regulations and implementing administrative systems are evaluated annually to determine their adequacy and effectiveness in relation to current agency responsibilities. Amendments shall be developed and approved pursuant to the results of systems review.

§ 700.511 Statements of employment and financial interests.

(a) *Employees required to file statements.* (1) Members of the Commission shall submit Financial Disclosure Reports (SF-278) to the Deputy Ethics

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Counselor of the Department of Interior, according to instructions received from that office. Issues of real or apparent conflict of interest which involve employees of the Senior Executive Service shall be resolved by the Ethics Officer of the Department of the Interior.

(2) The Designated Agency Ethics Official shall submit SF-278 to the Office of Government Ethics for review.

(3) The employee appointed as Deputy Ethics Official and incumbents of the positions listed below shall file NHIRC form 738.1F with the Designated Agency Ethics Official:

- (i) Executive Director.
- (ii) General Counsel.
- (iii) Assistant Director for Management Operations.
- (iv) Assistant Director for Relocation Operations.
- (v) Chief, Technical Services Division.
- (vi) Chief, Realty Division.
- (vii) Chief, Advisory Services Division.
- (viii) Chief, Office of Research, Planning and Evaluation.
- (ix) Procurement/Fiscal Officer.
- (x) Realty Specialists.
- (xi) Construction Inspectors.

(4) The Designated Agency Ethics Official may require Statements of Employment and Financial Interest from employees in other specified positions, if analysis of duties and responsibilities shows the positions meet the criteria listed in paragraph (b) of this section.

(5) Special Government Employees shall file NHIRC form 738.2F with the Designated Agency Ethics Official prior to beginning employment or service with the Commission. The Designated Agency Ethics Official may waive this requirement if the duties of the position held by the special Government employee are of a nature or at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Commission or the Government.

(b) *Criteria for selection of positions subject to filing requirements.* The following criteria govern selection of employees who must also file statements of Employment and Financial Interest

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(NHIRC Form 738.1F) with the Designated Agency Ethics Official.

(1) Statements of Employment and Financial Interest shall be required of employees holding positions which are responsible for:

- (i) Contracting or procurement.
- (ii) Administering or monitoring grants and subcontracts.
- (iii) Other activities where the decision or action has an economic impact on the interests of any person or non-Federal enterprise.

(2) When a new position is established or the duties of an existing position are materially changed, the position shall be evaluated pursuant to the criteria of this section to determine whether or not it should be designated as one requiring the incumbent to submit a Statement of Employment and Financial Interests.

(c) *Interests of relatives.* The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. Reports must include but are not limited to identification of such an individual's employer, financial holdings and debts. These provisions also apply to special Government employees.

(d) *Employee complaint against filing requirements.* An employee who believes that his or her position has been improperly included among those requiring the submission of a Statement of Employment and Financial Interests may obtain review through the Commission's administrative grievance procedure.

(e) *Procedures for obtaining statements.* Following approval of these regulations, the Designated Agency Ethics Official shall give each employee and special Government employee required to file under this part, a copy of the appropriate NHIRC form. An enclosure with the form shall advise that:

(1) The completed form shall be returned in a sealed envelope marked "personal-in confidence" to the Designated Agency Ethics Official within 30 days.

(2) The services of the Designated Agency Ethics Official are available to assist and advise in preparation of the statement.

(3) Any additions or deletions to the information furnished must be reported within 30 days of the time they occur, or in the case of a special Government employee, at the time the change occurs, and

(4) No later than June 1 of each year all employees and special Government employees required to file under paragraph (a)(3) of this section shall file an annual supplementary statement to update the information previously filed.

(5) New employees required to file under paragraph (a)(3) of this section shall submit a statement within 30 days of beginning employment with the Commission.

(e) *Confidentiality of statements.* Statements of employment and financial interest shall be held in confidence. Access to information from the statements shall not be disclosed except to carry out the purpose of this directive.

(f) *Resolving conflicts of interest.* When the Designated Agency Ethics Official determines from review of the statement that a conflict of interest may exist, the submitter shall have the opportunity to provide additional information, which shall become part of the record. The Designated Agency Ethics Official and the concerned employee shall make every effort to resolve the conflict in a manner that is mutually acceptable. If these efforts are not successful the Designated Agency Ethics Official shall forward a report and recommendation to the Chairman of the Commission for final action. Remedial action directed by the Chairman may include but is not limited to:

(1) Disqualification for a particular assignment.

(2) Change in assigned duties.

(3) Divestment of the employee or special Government employee of the conflicting interests.

(4) Disciplinary action, including removal.

§ 700.513 Business dealings on behalf of the government.

(a) All employees shall conduct themselves on the job so as to efficiently discharge the work of the Commission. Employees shall observe courtesy, consideration and promptness in dealing with clients, other govern-

mental agencies, and members of the public.

(b) Commission personnel conducting business with contractors, realtors, vendors, service providers and other public and private agencies, organizations, business and individuals shall maintain strict impartiality in their business dealings. Commission employees shall not allow themselves to be placed in a position in which a conflict of interest might arise or might justifiably be suspected. Such a conflict may arise or appear to arise by the acceptance of gratuities or by any action which could reasonably be interpreted as influencing the strict impartiality that must prevail in all business relationships involving the Commission. However, this requirement of impartiality is not intended to prohibit advocacy of client interests, as is required as a stated duty of certain agency positions. Such advocacy may occur for example during warrantee representation or during technical representation with builders.

§ 700.515 Conflicts of interest.

(a) A conflict of interest may exist when an employee uses, or appears to use, his or her official position to obtain benefits for himself or herself, close friends, relatives, or business associates. A conflict of interest may also exist if an employee's private activities interfere with the proper discharge of his or her official duties. If an employee has any doubt about whether or not a particular situation is, or gives the appearance of being a conflict of interest, the situation should be discussed with the immediate supervisor. Should further review be required, the Designated Agency Ethics Official shall be consulted.

(b) Principal situations where conflict of interest may develop are regulated by the sections which follow. However, these regulations do not preclude other conflict of interest situations which may arise in connection with the work of the Commission.

(c) These prohibitions apply to all Commission employees, whether or not they are required to file financial and employment disclosure statements.

§ 700.517 Affiliations and financial interests.

(a) Commission personnel shall not engage in any personal, business, or professional activity, or receive or retain any direct or indirect financial interest, which places them in a position of conflict or apparent conflict between their private interests and the public interests of the United States as related to the duties of their Commission positions.

(b) Employees are prohibited from accepting money, goods or services other than official compensation for any act performed by the employee as part of his or her official duties.

(c) Commission personnel shall not use, directly or indirectly, inside information for private gain for themselves, family members, or others if that information is not generally available to the public and was obtained as a result of Commission employment.

(d) Commission personnel are prohibited from using their official positions to induce, coerce, or in any manner influence any person, including subordinates, to provide any improper benefit, financial or otherwise, to themselves or others.

(e) Employees may not have any personal interest in transactions which are directed, regulated, or effected by the Commission pursuant to the authorities vested in the agency by Pub. L. 93-531 and Pub. L. 96-395. Specifically:

(1) No Commission employee shall have a personal interest in a contract, subcontract, memorandum of understanding or agreement, or other arrangement resulting in payment for the delivery of goods, services, or supplies to the Commission, to the Navajo or Hopi tribal governments, or to individual relocatees or groups of relocatees.

(2) No Commission employee shall have or seek an interest in real or personal property acquired for transfer to the Navajo or Hopi Tribes.

(3) No Commission employee shall have or seek an interest in any activity supported financially by the Commission through the award of Discretionary Funds.

(4) During the process of acquiring replacement housing for relocatees no

employee may have a personal interest in the activities of a contractor, realtor, or other business entity selected by the relocatee to furnish replacement housing; nor may the employee influence the relocatee to select any realtor, contractor or other business entity with which the employee has personal or business affiliations.

(5) Nothing in this section shall restrict a relocatee's right to exercise free and independent judgment in selecting a realtor, contractor, or other vendor or service provider; regardless of any personal or business relationship of that entity to a Commission employee, provided the employee has not influenced the choice of the relocatee in any manner.

(6) Nothing in this section shall restrict a Commission employee who is eligible for relocation benefits from applying for and obtaining such benefits according to published criteria; nor to prevent the Commission from employing a member of the Hopi or Navajo Tribe who has been, or is in the process, of being relocated pursuant to the law.

(7) Commission employees shall disqualify themselves from investigating and preparing recommendations regarding eligibility determination for applicants to whom they are closely related by blood or marriage.

§ 700.519 Gifts, entertainment and favors.

(a) Acceptance of gratuities, including gifts, entertainment and favors, (no matter how innocently tendered or received) from those who have or seek business dealings with the Commission, is prohibited as it may be a source of embarrassment to the recipient, and may impair public confidence in the integrity of the conduct of the Government's business. It is emphasized that prohibited conflicts and apparent conflicts of interest can sometimes arise even from relationships and transactions that the persons concerned perceive as inconsequential.

(b) Except as provided in paragraphs (c) and (d) of this section, Commission personnel and their spouses, minor children and members of their households shall not solicit nor accept, either directly or indirectly, any gift,

gratuity, favor, entertainment loan or any other thing of monetary value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission,

(2) Conducts operations or activities that are regulated by the Commission or significantly affected by Commission decisions, or

(3) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(c) Employees are specifically prohibited from accepting gifts or favors from vendors, contractors, builders, realtors, tribal officials or other individuals with whom Commission employees do business. This prohibition extends to the acceptance of meals and refreshments offered by individuals conducting or seeking business with the Commission whether during duty or non-duty hours.

(d) The following circumstances are excepted from the prohibitions listed above:

(1) An employee may accept unsolicited advertising or promotional material with the name of the company imprinted, such as pencils, calendars and similar items of nominal intrinsic value.

(2) An employee may accept transportation and meals provided by a contractor in connection with official business when arrangements for Government or commercial transportation or meals are clearly impracticable and the supervisor has granted prior approval.

(3) An employee may accept an invitation extended by a relocatee to attend a housewarming, potluck, accept a meal and refreshments while traveling on the reservation, or similar social activity when circumstances would make it rude for the employee to refuse.

(4) Other circumstances may arise in which it would be to the Commission's advantage for an employee to participate in activities ordinarily prohibited. In such cases, the employee shall consult with his or her supervisor about the course of action to be followed. If prior consultation is not possible, the employee shall exercise prudent judge-

ment and promptly inform the supervisor of the activity.

§ 700.521 Outside work and interests.

Commission employees may engage in outside work or other activity which does not create a conflict between the employee's private interests and official duties nor prevent employees from devoting their talents and energies to the Commission. An employee's outside work shall not reflect discredit upon the Commission.

(a) Employees engaged in or considering outside employment shall inform their supervisor of the work, and supply such additional details as may be required to determine whether the employment is compatible with the full and proper discharge of the employee's official duties.

(b) Similarly, employees shall inform the supervisor and request approval of other types of outside activities which may present an actual or apparent conflict of interest between the employees' official duties and their private lives. The supervisor shall determine if the outside employment or activity is prohibited by these regulations, and so inform the employee. The Designated Agency Ethics Official is available to assist supervisors in making such determinations.

(c) *Guidelines and limitations.* Outside employment or other outside activity is incompatible with the full and proper discharge of an employee's duties and responsibilities and hence is prohibited if:

(1) It would involve the violation of a Federal or State statute, a local ordinance, Executive Order, or regulation to which the employee is subject.

(2) It would be of such extent or nature as to interfere with the efficient performance of the employee's Government duties, or impair the employee's mental or physical capacity to perform them in an acceptable manner.

(3) It would tend to influence the exercise or impartial judgement on any matters coming before the employee in the course of his or her duties;

(4) It would involve work for contractors, subcontractors, realtors, tribal offices, clients or other entities and individuals which have business with or receive services from the Commission or

conduct activities which are regulated by the Commission.

(5) Involves a person or enterprise that may be substantially affected by the performance or nonperformance of the employee's official duties.

(6) It involves the use of the employee's time during official working hours.

(7) It involves the receipt of salary or anything of monetary value from a private source as compensation for services to the Government.

(8) It involves acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value under circumstances in which acceptance might result in, or create the appearance of, a conflict of interest.

(9) It would be of a nature which might be construed by the general public to be an official act of the Commission, or would give the impression that a business or product which is involved in the relocation project is officially endorsed or approved by the Commission.

(10) It would involve use by the employee of official facilities, e.g., office space, office machines, or supplies, or the services of other employees during duty hours.

(11) It might bring discredit upon, or cause unfavorable criticism of, the Government or the Commission or lead to relationships which might impair public confidence in the integrity of the Government or the Commission.

(12) It would involve the use of information obtained as a result of Government employment that is not freely available to the general public in that it either has not been made available to the general public or would not be made available upon request.

§ 700.523 Business relationships among employees.

Business relationships among Commission employees which take place after working hours and away from Commission premises are not matters for regulation, unless they violate the restrictions listed above.

§ 700.525 Use of government information or expertise.

(a) Commission personnel may engage in teaching, lecturing and writing about the relocation program, provided

the information which they present is public knowledge or would be made available to the public upon request.

(b) Employees shall inform their supervisors in advance of any teaching, writing, or lecturing activity which relates to the Commission operations. The Commissioners may at their discretion exercise the right of review and approval of materials to be presented.

(c) Employees must obtain supervisory approval for release of information considered confidential, and release of information not previously published as public information.

(d) Disclosure of information from records shall conform with the provisions of the Freedom of Information and the Privacy Acts (5 U.S.C. 552). An employee may not release confidential information maintained by the Commission and available to the employee because of his position as an employee of the Commission. Violation of this prohibition may result in prosecution under the terms of the Privacy Act in addition to any disciplinary penalties levied by the employee's supervisor.

(e) Commission personnel may not accept compensation for an article, speech, consultant service, or other activity if it involves the use of information obtained as the result of Government employment which is not available to the general public as described in paragraph (a) of this section, or results in an actual or appearance of conflict of interest.

(f) Unless there is a definite Commission position on a matter which is the subject of an employee's writing or speech, and the individual has been authorized by the Commissioners to present that position officially, the employee shall expressly present his or her views on the matter as his or her own and not as those of the Commission.

(g) The right of an employee to express personal opinions is respected. However, once the Commission has established policy and procedure, every employee is obligated to carry out all lawful regulations, orders, and assignments, and to support the programs of the Commission as long as they are part of recognized public policy.

(h) In dealing with the public and with relocatees, employees should

avoid issuing opinions or decisions contrary to Commission policy which can be mistaken as official Commission policy.

§ 700.527 Endorsements.

Employees are prohibited from endorsing in an official capacity business products or processes or the services of commercial firms for advertising publicity or sale purposes. Use of materials, products or services, by the Commission does not constitute official endorsement. Employees may not recommend for or against any particular builder, supplier, realtor, contractor or other person or business seeking to sell any product or service to relocatees.

§ 700.529 Negotiations for employment.

An employee shall inform the supervisor and seek the advice of the Designated Agency Ethics Official if he or she wishes to negotiate for future non-Federal employment with persons or organizations having business with the Commission if the employee is involved in making recommendations or decisions affecting those persons or organizations.

§ 700.531 Government property.

Employees shall be held accountable for Government property and monies entrusted to their individual use or in connection with their official duties. An employee has a positive duty to protect and conserve Government property and to use it economically and for official purposes only, for example:

- (a) Only official documents and materials may be reproduced on Government reproduction equipment.
- (b) Government vehicles may be used only on official business and may not be used for personal use or for travel to or from an employee's place of residence, unless specifically authorized or assigned by the supervisor.
- (c) An employee may not use FTS to make personal phone calls at Government expense.
- (d) An employee may not use Government purchase authority for personal acquisitions even though reimbursement is made.

§ 700.533 Restrictions affecting travel and travel expense reimbursement.

(a) When an employee is on officially authorized travel his or her expenses are reimbursed by the Government. The employee may not request nor accept reimbursement in cash or kind for travel expenses from any other source, even when the employee's expenses exceed the maximum Government allowance.

(b) An employee who is authorized to attend a convention, seminar, or similar meeting while on official duty, whose travel is being paid by the sponsoring association, may not also claim travel expenses from the Government.

(c) An employee may accept accommodations and expense reimbursement for attending meetings, functions, etc. in his or her private capacity and on his or her own time, provided that such acceptance does not produce an actual or apparent conflict of interest. This restriction prohibits an employee from accepting accommodations or reimbursement from anyone having or seeking business with the Commission.

(d) Commission employees traveling on official business, as well as employees traveling on personal business, may not accept the use of private airplanes, cars, or other means of transportation offered at no expense by individuals conducting or seeking business dealings with the Commission, nor from clients of the Commission.

Exception: An employee may accept transportation and meals of modest value provided by a contractor or client in connection with official business when it is not practical to make arrangements for Government or commercial accommodations. The employee must receive prior approval of the supervisor in such case. This might occur, for example, if an employee were traveling to a remote area where no Government vehicle were available, or where there are no nearby restaurants or eating places. There is no prohibition against a contractor or private citizen traveling as a passenger in a Government vehicle driven by a Commission employee on official business, provided administrative procedures have been followed in making the travel arrangements.

§ 700.535 Nepotism.

An employee may not appoint or advocate the appointment to any position under his or her control, any individual

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who is a relative of the employee. No employee shall supervise a member of his or her own family except in emergency situations.

§ 700.537 Indebtedness.

(a) Commission personnel shall pay their just financial obligations in a timely manner, especially those imposed by law, such as Federal, state, or local taxes. For the purposes of this paragraph, "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court.

(b) Employees shall promptly refund any salary overpayments and excess travel advances.

(c) An employee's debts to private creditors are his or her personal concern. Any complaints or questions concerning such obligations will be referred to the employee for handling. Creditors and collectors shall not have access to employees on Agency premises during duty hours.

§ 700.539 Soliciting contributions.

(a) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior or accept a gift from an employee receiving less pay than himself or herself. (5 U.S.C. 7351) However, this paragraph does not preclude a voluntary gift of nominal value made on a special occasion.

(b) If authorized by the supervisor, an employee may solicit contributions for charitable causes. He or she may also be permitted to collect small donations for gifts for fellow employees for special occasions during slack moments.

§ 700.541 Fraud or false statement in a Government matter.

"Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly or wilfully falsifies, conceals or covers up by a trick, scheme or device a material fact, or makes or uses any false writing or document knowing the same to contain false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years or both (18 U.S.C. 1001)." Special attention is required in

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the certification of time and attendance reports, applications for employment, personnel security forms, requests for travel reimbursement, client certification documents, and purchase orders and receiving forms.

§ 700.543 Gambling.

An employee shall not sponsor or participate in any gambling activity during working hours on Government premises.

§ 700.545 Alcoholism and drug abuse.

An employee who habitually uses intoxicants to excess is subject to removal (5 U.S.C. 7352). The Relocation Commission recognizes alcoholism and drug abuse as serious and treatable illnesses. Excessive absence and poor work performance are two of the specific problems resulting from excessive use of alcohol and drugs. The Commission management will assist any employee who has such a problem to obtain professional help and will make reasonable allowance as permitted by work schedules to allow an employee approved leave for professional treatment. Anyone who seeks such assistance will be guaranteed confidential handling of his or her case. Disciplinary action will be considered if an employee rejects or ignores treatment or other appropriate assistance.

§ 700.547 Consuming intoxicants on Government premises or during duty hours.

Consuming alcohol or non-prescription drugs on agency premises, or while driving or riding in a Government vehicle, or during working hours are prohibited conduct and employees violating this regulation are subject to disciplinary action, including discharge.

§ 700.549 Employee organizations.

An employee may not knowingly be a member of an organization of Government employees that advocates the overthrow of the United States' constitutional form of government (5 U.S.C. 7311). Employees are also prohibited from striking against the Federal Government. With these restrictions, an employee has the right to form, join, or assist lawful employee organizations. Similarly, an employee has

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also the right to refrain from such activity. In either case, the employee may exercise his or her right freely and without fear of penalty or reprisal and shall be protected in the exercise of such rights.

§ 700.551 Franking privilege and official stationery.

An employee is strictly prohibited from using Government franked envelopes with or without applied postage, or official letterhead stationery for personal business. (18 U.S.C. 1719)

§ 700.553 Use of official titles.

Employees are prohibited from using their official titles in conducting private business or participation in private or public group activities not concerned with official duties. Use is strictly limited to those occasions and circumstances where representation is official.

§ 700.555 Notary services.

An employee may not charge a fee for performing notarial services as part of his or her job duties (EO 977 Nov. 24, 1908).

§ 700.557 Political activity.

(a) Regulations on the political activity of Federal employees can be found in 5 U.S.C. 73. In general, the law and the rules prohibit using official authority or influence for the purpose of interfering with an election or affecting its results, and taking an active part in partisan political management or partisan political campaigns.

(b) Special Government employees of the Commission are subject to the political activity restrictions contained in 5 U.S.C. 73 and 18 U.S.C. 602, 603, 607 and 608 while on an active duty status only.

(c) Pursuant to provisions of the regulations cited, employees may take part in certain local elections. However, Commission employees are restricted from taking an active role in political elections of the Navajo and Hopi tribal governments, even though such elections are not partisan in the usual meaning of the word. With respect to tribal elections, employees may not:

(1) Run for tribal elective office.

(2) Organize, direct, nor actively participate in a tribal electoral campaign.

(3) Solicit or attempt to coerce fellow employees to contribute anything of value to an individual or group engaged in tribal political activity.

(4) Circulate petitions, posters, or other political materials during working hours or on Commission premises.

(5) Engage in any other type of tribal political activity which produces a conflict of interest between the employee's job responsibilities and the political activity.

§ 700.559 Equal opportunity.

Commission personnel shall scrupulously adhere to the Commission program of equal opportunity regardless of race, color, religion, sex, age, handicap, or national origin.

§ 700.561 Sexual harassment.

(a) Sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment is defined by the Office of Personnel Management as "deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome." Sexual harassment does not refer to occasional compliments. It refers to behavior which is not welcome, which is personally offensive and debilitates morale, interfering with the work effectiveness of its victims and their co-workers.

(b) Sexual harassment is a prohibited personnel practice when it results in discrimination for or against an employee on the basis of conduct not related to performance.

For example:

- If submission to sexual advances is a condition of employment, whether expressed in explicit or implicit terms;
- If employment decisions, such as promotion, training, salary increases, rewards, etc., are based on an employee's submission to or rejection of sexual advances;
- If the sexual conduct substantially interferes with an affected person's work performance, or creates an intimidating, hostile or offensive work environment.

(c) Within the Federal Government, a supervisor who uses implicit or explicit coercive sexual behavior to control, influence, or affect the career, salary or job of an employee is engaging in sexual harassment. Similarly, an employee of an agency who behaves in this manner in the process of conducting agency business is engaging in sexual harassment. Finally, any employee who participates in deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome and interfere with work productivity is also engaging in sexual harassment.

(d) It is the policy of the Relocation Commission that sexual harassment is unacceptable conduct in the workplace and will not be condoned. An employee who believes that he or she is subject to sexual harassment may contact one or more of the following people within the Commission for assistance:

- (1) The immediate supervisor or second level supervisor.
- (2) The EEO Counselor.
- (3) The agency EEO Officer.
- (4) The EEO Counselor at the Agency Liaison Division of the General Services Administration.

§ 700.563 Statutory restrictions from 18 U.S.C. 207, which are applicable to former Government employees.

(a) *Restrictions applicable to all former officers and employees*—(1) *Permanent bar*. A former Government employee is permanently barred from serving as agent or attorney for anyone other than the United States before any Government office or agency on any particular matter involving specific parties in which the former officer or employee had participated personally and substantially while with the Government.

(2) *Two year bar*. A restriction similar to the one summarized above prevents a former employee for two years from representational activities on all particular matters which were actually pending under the former employee's "official responsibility" during the one-year period prior to the termination of such responsibility.

(b) *Restrictions applicable only to "senior employees."* (1) Members of the

Senior Executive Service are considered senior employees.

(2) Two-year ban on assisting in representation by personal presence. A former senior employee may not assist in the representation of another person by personal presence at an appearance before the Government on any particular matter in which the former employee personally and substantially participated while with the Government.

(3) One-year on attempt to influence former agency. A former senior employee may not represent another person or himself in attempting to influence his own former agency on a matter pending before, or of substantial interest to, such agency. Certain communications are exempted from this provision. These include communications by former senior employees who are employed by State or local governments or by certain educational or medical institutions, other exempt communications are those that are purely social or informational, communications on matters that are personal, including any expression of personal views where the former employee has no pecuniary interest, and response to a former agency's requests for information.

(c) *Implementing regulations*. (1) Detailed regulations implementing this law have been published by the Director, Office of Government Ethics (see 5 CFR part 737). The Designated Agency Ethics Official should be consulted for any additional information.

§ 700.565 Miscellaneous statutory provisions.

Commission personnel shall acquaint themselves with Federal statutes which relate to their ethical and other conducts as employees of the Commission and of the Government. The attention of Commission personnel is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress 2d Session, 72A Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of the Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosures of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter.

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607 and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart P—Hopi Reservation Evictees

SOURCE: 48 FR 51771, Nov. 14, 1983, unless otherwise noted.

§ 700.601 Definitions.

(a) *Hopi reservation evictees.* Hopi reservation evictees are those members of the Navajo Tribe who were evicted from the Hopi Indian Reservation as a consequence of the decision in the case of *United States v. Kabinto* (456 F. 2d 1087) (1972).

(b) *Head of household.* (1) A household is group of two or more persons who live together at a specific location, who form a unit of permanent and domestic character.

(2) The head of household is the individual who speaks on behalf of the members of the household and who is determined by the Commission to represent the household.

(3) In order to be eligible for benefits under this section, an individual must be a head of household as of the date of certification for benefits.

(4) Those single individuals who actually maintain and support themselves as of the date of certification for benefits shall be considered a head of household.

(c) *Hopi reservation.* For purposes of this subpart Hopi reservation shall mean the lands in Land Management District No. Six as defined in the September 28, 1962, Judgment in *Healing v. Jones* Civ. No. 579 pCT (d), Ariz., and shall not include the Hopi Partitioned Lands.

(d) *Equivalent assistance from federal agencies.* Housing provided for Hopi reservation evictees shall be considered equivalent assistance if it meets the Commission's standards for a decent, safe and sanitary dwelling under § 700.55 of these rules.

§ 700.603 Eligibility.

(a) Those heads of household who were members of the Navajo Tribe and were evicted from the Hopi reservation as a consequence of the decision in the *United States v. Kabinto* shall be eligible to receive relocation assistance on a preference basis.

(b) Proof of eviction shall be determined by one of the following criteria:

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(1) Inclusion on the list of defendants in the case of *United States v. Kabinto* (456 F. 2d 1087) (1972);

(2) Inclusion on the lists prepared by the BIA dated May 10, 1979, and May 21, 1979, as a result of having provided services to those heads of household.

(3) Inclusion on a list prepared by the Navajo Tribe and submitted to the Commission on January 16, 1981;

(4) Inclusion on a list prepared by the Navajo Legal Aid Service dated April 29, 1970;

(5) Other evidence furnished by the applicant which is sufficient to prove their status as evictees from the Hopi reservation, as determined by the Commission.

§ 700.605 Relocation assistance.

(a) Each eligible head of household of Hopi reservation evictees shall be entitled to receive the following assistance:

(1) Relocation advisory services as provided in § 700.135 of this part;

(2) Moving and search expenses, as provided in § 700.151 of this part;

(3) Replacement housing payments as set forth below.

(b)(1) If the head of household owns no dwelling, the Commission will make funds available to the head of household as provided in these regulations for the acquisition of a replacement home in one of the following manners:

(i) Purchase of an existing home by the head of household,

(ii) Contracting by the head of household for the construction of a home,

(iii) Participation or purchase by the head of household in a mutual help housing or other home ownership project under the U.S. Housing Act of 1937 (50 Stat. 888, as amended; 42 U.S.C. 1401) or in any other federally assisted housing program.

(2) If the eligible head of household owns or is buying or building a home, the Commission will expend relocation benefits in one of the following manners:

(i) If the home is decent, safe and sanitary, but is encumbered by a mortgage, such mortgage existing as of the effective date of these regulations, the Commission may expend replacement housing benefits up to the maximum then existing replacement home ben-

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efit to accelerate to the maximum extent possible the achievement by that household of debt-free home ownership.

(ii) If the home is owned free and clear but does not meet Commission decent, safe and sanitary standards; or the home is neither owned free and clear, nor is decent, safe and sanitary, the Commission will, at its discretion either:

(A) Expend replacement home benefits for improvements to assure the home meets the Commission's decent, safe and sanitary standards, or

(B) Expend replacement home benefits for the acquisition of a replacement dwelling as if the eligible head of household or spouse did not own a home as in paragraph (b)(1) of this section.

(3) If the home is decent, safe and sanitary, and is owned free and clear, no replacement housing benefits will be paid.

(4) The amount of the replacement housing payment shall be calculated in accordance with § 700.183 of these rules except that no compensation will be paid for habitation and improvements.

(5) The determination of whether the head of household of Hopi reservation evictees currently occupies a decent, safe and sanitary dwelling shall be made in accordance with § 700.55 of these rules.

(C) If the head of household has received equivalent assistance from other federal agencies as defined in § 700.601(d), they shall not be entitled to additional assistance from the Commission.

§ 700.607 Dual eligibility.

Those individuals who moved from the Hopi reservation following eviction to the Hopi partitioned Lands and who are eligible to receive benefits under the general regulations shall not receive benefits under this subpart but shall receive benefits under the general regulations on a preferential basis.

§ 700.609 Appeals.

Appeals of eligibility, hearings and administrative review (appeals) will be administered under subpart L of this part.

§ 700.611 Application deadline.

The deadline for receipt of applications for benefits under this subpart shall be 120 days following publication of these final rules.

Subpart Q—New Lands Grazing

SOURCE: 56 FR 13397, Apr. 2, 1991, unless otherwise noted.

§ 700.701 Definitions.

(a) *Act* means Pub. L. 93-531 (88 Stat. 1712, 25 U.S.C. 640 *et. seq.*) as amended by Pub. L. 96-305 and Pub. L. 100-666.

(b) *New Lands* means the land acquired for the use of relocatees under the authority of Pub. L. 96-305, 25 U.S.C. 640d-10. These lands include the 215,000 acres of lands acquired by the Navajo and Hopi Indian Relocation Commission and added to the Navajo Reservation and 150,000 acres of private lands previously owned by the Navajo Nation in fee and taken in trust by the United States pursuant to 25 U.S.C. 640d-10.

(c) *Commissioner* means the Commissioner of The Office of Navajo and Hopi Indian Relocation in Flagstaff, Arizona. Reference to approval or other action by the Commissioner will also include approval or other action by another Federal officer under delegated authority from the Commissioner.

(d) *Tribe* means the Navajo Nation.

(e) *Range unit* means a tract of range land designated as a management unit for administration of grazing.

(f) *Range Management Plan* means a land use plan for a specific range unit that will provide for a sustained forage production consistent with soil, watershed, wildlife, and other values.

(g) *Stocking rate* means the authorized stocking rate by range unit as determined by the Commissioner. The stocking rate shall be based on forage production, range utilization, land management applications being applied, and range improvements in place to achieve uniformity of grazing under sustained yield management principles.

(h) *Grazing permit* means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of

land. The term, as used herein, shall include written authorization issued to enable the crossing or trailing of domestic livestock across specified tracts or range.

(i) *Animal unit* (AU) means one adult cow with unweaned calf by her side or equivalent thereof based on comparative forage consumption. Accepted conversion factors are: Sheep and Goats—one ewe, doe, buck, or ram equals 0.25 AU. Horses and Mules—one horse, mule, donkey or burro equals 1.25 AU.

(j) *Sheep unit* means one ewe with lamb at side or a doe goat with kid.

(k) *SUYL* means one sheep unit grazed yearlong.

(l) *HPL* means the area partitioned to the Hopi Tribe pursuant to Pub. L. 93-531 known as the Hopi Partitioned Land.

§ 700.703 Authority.

It is within the authority of the Commissioner on Navajo and Hopi Indian Relocation to administer the New Lands added to the Navajo Reservation pursuant to 25 U.S.C. 6-10(d)-10.

§ 700.705 Objectives.

It is the purpose of the regulations in this part to aid the Navajo Indians in achievement of the following objectives:

(a) The preservation of the forage, the land, and the water resources on the New Lands.

(b) The resettlement of Navajo Indians physically residing on the HPL to the New Lands.

§ 700.707 Regulations; scope.

The grazing regulations in this part apply to the New Lands within the boundaries of the Navajo Reservation held in trust by the United States for the Navajo Tribe which lands were added to the Navajo Reservation pursuant to 25 U.S.C. 640(d)-10; 25 CFR parts 166 and 167 are not applicable to the New Lands.

§ 700.709 Grazing privileges.

(a) A list of permittees eligible to receive grazing permits is kept at the Office of Navajo and Hopi Indian Relocation in Flagstaff, Arizona. This list is composed of individuals eligible for New Lands grazing permits who:

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(1) Have a current HPL grazing permit, or have had an HPL permit issued since 1980, or are current HPL residents and can show documentation of a past grazing permit issued in their name for grazing on an area now on the HPL, and

(2) Who have not received relocation benefits under Pub. L. 93-531, and who relocate from the HPL on to a New Lands range unit. Individuals on this list will receive a commitment that a permit will be issued to them.

(b) If such persons cannot relocate immediately because their chosen relocation site is not ready for occupancy, the Office will issue a commitment to them that a grazing permit will be granted upon their relocation.

(c) If such persons are notified by the Office that their relocation site is ready for occupancy and they fail or refuse to make timely arrangements to relocate when requested by the Office to do so, the commitment may be withdrawn.

(d) Persons on this list must file an application for a New Lands Grazing Permit. The Commissioner will determine when the application period will close and will publish notice of that date. After the close of the period for application, the Commissioner, in his sole discretion, may issue permits to individuals if it is determined that to do so will facilitate relocation.

(e) Initial determinations on eligibility for grazing permits will be made by the Range Supervisor.

[56 FR 13397, Apr. 2, 1991, as amended at 57 FR 24363, June 9, 1992]

§ 700.711 Grazing permits.

(a) All livestock grazed on the New Lands must be covered by a grazing permit authorized and issued by the Commissioner on Navajo and Hopi Indian Relocation.

(b) Permit holders must:

(1) Be enrolled Navajo Tribal members,

(2) Be over 18 years of age,

(3) Maintain a permanent residency on the New Lands Range Unit of permit issue, and

(4) Own livestock which graze on the range unit of permit issue.

(c) Permits will be issued for a base of 80 SUYL (20 AU) and may not be di-

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vided or transferred for less than 80 SUYL.

(d)(1) Temporary seasonal grazing permits for periods not to exceed one year may be issued to permittees:

(i) To use extra forage made available under rotation grazing management as regulated by a range unit management plan,

(ii) To use forage created by unusually favorable climatic conditions,

(iii) To allow use of range while term permits are held in suspension under § 700.715(d).

(2) These temporary permits may be reissued prior to termination provided:

(i) The permittee is managing grazing in compliance with grazing regulations,

(ii) Livestock grazing is in compliance with the cooperative range unit range management plan, and

(iii) Forage is available on the range to sustain the livestock authorized under the temporary permit.

§ 700.713 Tenure of grazing permits.

(a) All active regular grazing permits shall be for five years and shall be automatically reissued for another five-year period provided the permittee is not in violation of § 700.711 or 700.715 or 700.719 or 700.723 or 700.725 of the regulations. Permits will initially be issued with an ending date of October 31 of the fifth year following the date of initial issuance.

(b) Amendments to these regulations extending or limiting the tenure of grazing permits are applicable and become a condition of all previously granted permits.

§ 700.715 Assignment, modification, and cancellation of grazing permits.

(a) Grazing permits may be assigned or transferred with the written consent of the contracting parties. The Commissioner will issue a new permit provided the transferee meets qualifications under § 700.711(b).

(b) Temporary permits issued under § 700.711(d) are directly tied to the term permit and may be transferred with the term permit if the transferee signs the range unit management plan which provides the management for continuation of the temporary grazing permit.

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Temporary permits will not be transferred and shall be null and void if the term permit transferee does not sign the management plan agreeing to practice conservation management.

(c) Grazing permits may be assigned for transfer through a notarized document to an heir who meets the qualifications for a grazing permit under § 700.711.

(d) Grazing permits must be transferred in whole to a single transferee—the transferor relinquishing all grazing privileges at the time of transfer.

(e) The Commissioner may revoke or withdraw all or any part of a grazing permit by cancellation or modification on a 30 day written notice for violation of the permit or of the management plan, non-payment of grazing fees, violation of these regulations, or because of the termination of the trust status of the permitted land.

§ 700.717 Stocking rate.

The Commissioner will determine livestock carrying capacity for each range unit and set the stocking rate and adjust that rate as conditions warrant. The Commissioner may consult with the Tribe when making adjustments to the stocking rate.

§ 700.719 Establishment of grazing fees.

The Commissioner may establish a minimum acceptable grazing fee per SUYL. The Commissioner may consult with the Tribe prior to establishing fees.

§ 700.721 Range management plans.

The Commissioner (or his designee) and the permittees of each range unit will meet as a group and develop a Range Management Plan for the common use of the range unit. The plan will include but will not be limited to the following:

- (a) Goals for improving vegetative productivity.
- (b) Incentives for carrying out the goals.
- (c) Stocking rate.
- (d) Record of brands of livestock authorized to graze on the range unit.
- (e) Grazing plan and schedule.
- (f) Range monitoring schedule.
- (g) Wildlife management.

(h) Needs assessment for range and livestock improvements.

(i) Scheduling for operation and maintenance of existing range improvements.

§ 700.722 Grazing associations.

(a) The Commissioner may recognize, cooperate with, and assist range unit livestock associations in the management of livestock and range resources.

(b) These associations will provide the means for the members:

(1) To jointly manage their permitted livestock and the range resources,

(2) To meet jointly with the ONHIR range staff to discuss and formulate range management plans,

(3) To express their wishes through designated officers or committees,

(4) To share costs for handling livestock, construction of range improvements, fence and livestock facilities maintenance, and other land or livestock improvement projects agreed on, and

(5) To formulate association special rules needed to assure cooperation and resource management.

(c) The requirements for receiving recognition by the Commissioner are:

(1) The members of the association must be grazing permittees and constitute a majority of the grazing permittees on the range unit involved.

(2) The officers of the association must be elected by a majority of the association members or of a quorum as specified by the association's constitution and bylaws.

(3) The officers other than secretary and treasurer must be grazing permittees on the range unit involved.

(4) The association's activities must be governed by a constitution and bylaws acceptable to the Commissioner and signed by him.

(5) The association's constitution and bylaws must recognize conservation management goals and the need to follow a range unit management plan.

(d) The Commissioner may withdraw his recognition of the association whenever:

(1) The majority of the grazing permittees request that the association be dissolved.

(2) The association becomes inactive and does not meet in annual or special

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meetings during a consecutive two-year period.

(e) A recognized association may hold a grazing permit to benefit its members according to the rules of the association constitution and bylaws. All of the association's livestock will be run under an association brand properly registered with the Navajo Tribe and the ONHIR.

(f) Associations may acquire permits from consenting permittees on the range unit in accordance with § 700.711 and may assign or transfer these permits in accordance with § 700.715.

§ 700.723 Control of livestock disease and parasites.

Whenever livestock within the New Lands become infected with contagious or infectious disease or parasites or have been exposed thereto, such livestock must be treated and the movement thereof restricted by the responsible permittee in accordance with applicable laws.

§ 700.725 Livestock trespass.

The following acts are prohibited:

(a) The grazing of livestock upon, or driving of livestock across, any of the New Lands without a current approved grazing or crossing permit.

(b) The grazing of livestock upon an area specifically rested from the grazing of livestock according to the range unit Range Management Plan.

(c) The grazing of livestock upon any land withdrawn from use for grazing to protect it from damage after receipt of appropriate notice from the Commissioner.

(d) The grazing of livestock in excess of those numbers authorized on the livestock grazing permit approved by the Commissioner.

(e) Grazing of livestock whose brand is not recorded in the range unit Range Management Plan.

The owner of any livestock grazing in trespass on the New Lands is liable to a civil penalty of \$1 per head per day for each cow, bull, horse, mule or donkey and 25¢ per head per day for each sheep or goat in trespass and a reasonable value for damages to property injured or destroyed. The Commissioner may take appropriate action to collect all such penalties and damages and

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seek injunctive relief when appropriate. All payments for such penalties and damages shall be paid to the Commissioner for use as a range improvement fund.

§ 700.727 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock within any range unit of the New Lands which are not removed therefrom within the periods prescribed by the regulation will be impounded and disposed of by the Commissioner as provided herein.

(a) When the Commissioner determines that unauthorized livestock use is occurring, and has definite knowledge of the kind of unauthorized livestock and knows the name and address of the owners, the owner shall be given written notice and a 10 day period shall be allowed for the permittee to solve the unauthorized use without penalty. If after this 10 day period the unauthorized use is not resolved, such livestock may be impounded at any time after five days after written Notice of Intent to Impound Unauthorized Livestock is mailed by certified mail or personally delivered to such owners or their agent.

(b) When the Commissioner determines that unauthorized livestock use is occurring, but does not have complete knowledge of the number and class of livestock, or if the name and address of the owner thereof are unknown, such livestock may be impounded at anytime after 15 days after the date a General Notice of Intent to Impound Unauthorized Livestock is first published in a local newspaper, posted at the nearest chapter house, and in one or more local trading posts.

(c) Unauthorized livestock on the New Lands which are owned by persons given notice under paragraph (a) of this section and any unauthorized livestock in areas for which notice has been posted and published under paragraph (b) of this section, will be impounded without further notice anytime within the 12-month period immediately following the effective date of the notice.

(d) Following the impoundment of unauthorized livestock, a notice of sale of impounded livestock or unauthorized livestock will be published in a local newspaper, posted at the nearest

chapter house, and in one or more local trading posts. The notice will describe the livestock and specify the date, time, and place of sale. The date set shall be at least five days after the publication and posting of such notice.

(e) The owners or their agent may redeem the livestock anytime before the time set for the sale by submitting proof of ownership and paying for all expenses incurred in gathering, impounding, and feeding or pasturing the livestock and any trespass fees and/or damages caused by the animals.

(f) Livestock erroneously impounded shall be returned to the rightful owner, and all expenses accruing thereto shall be waived.

(g) If the livestock are not redeemed before the time fixed for their sale, they shall be sold at public sale to the highest bidder. When livestock are sold pursuant to this regulation, the Commissioner shall furnish the buyer a bill of sale or other written instrument evidencing the sale.

(h) The proceeds of any sale of impounded livestock shall be applied as follows:

(1) To the payment of all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock.

(2) Trespass penalties assessed pursuant to § 700.725 shall be paid to a separate account to be administered by the Commissioner for use as a range improvement fund for the New Lands.

(3) Any remaining amount shall be paid over to the owner of said livestock upon his submitting proof of ownership.

Any proceeds remaining after payment of the first and second items noted above, not claimed within one year from the date of sale, will be credited to the United States.

§ 700.729 Amendments.

These regulations may be amended or superseded as needed.

§ 700.731 Appeals.

Persons who have filed a claim for a grazing permit and whose claim has been denied by the Range Supervisor may appeal to the Commissioner. Appeals must be made in writing and must be received by the Office not

more than 30 days after the date the claim was denied. The appeal shall state with specificity why the decision being appealed is in error and shall incorporate all supporting documents. The Commissioner will issue a decision affirming or reversing the decision of the Range Supervisor within 60 days of receipt of the appeal. Such decision will constitute final action by the Office and will be communicated to the appellant by certified mail.

Subpart R—Protection of Archaeological Resources

SOURCE: 62 FR 35078, June 30, 1997, unless otherwise noted.

§ 700.801 Purpose.

(a) The regulations in this subpart implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11) by establishing the uniform definitions, standards, and procedures to be followed by the O.N.H.I.R. New Lands Manager in providing protection for archaeological resources, located on the New Lands. The regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 43 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 700.803 Authority.

The regulations in this part are promulgated pursuant to section 10(b) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii). Section 10(b) of the Act (16 U.S.C. 470ii)

provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

§ 700.805 Definitions.

As used for purposes of this part:

(a) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470-aa-11).

(b) *Archaeological resource* means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) *Of archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) *Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section.

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars, or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits, or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons, and weapon projectiles, clothing, and ornaments (including, but not limited to

pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked ground or pecked stone);

(iv) By products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios, and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains described in this paragraph (a);

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Any portion or piece of any material remains described in this paragraph (a).

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal Land Manager may determine that certain material remains, in specified areas under the Federal Land Manager's jurisdiction and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this paragraph (a)(5) shall be documented. Such determination shall in no way affect the Federal Land Manager's obligations under other applicable laws or regulations. Prior to making a determination that material remains are not or are no longer archaeological resources, the Federal Land Manager shall consult with the Navajo Nation to obtain their concurrences.

(c) *Arrowhead* means any projectile point which appears to have been designed for use with an arrow.

(d) *Commissioner* means the Commissioner of the Office of Navajo and Hopi Indian Relocation. Reference to approval of other action by the Commissioner will also include approval or other action by another Federal Officer under delegated authority from the Commissioner.

(e) *Federal Land Manager* means: With respect to the New Lands, the Commissioner of Navajo and Hopi Indian Relocation, having primary management authority over such lands, including persons to whom such management authority has been officially delegated.

(f) *Indian tribe* or *Tribe* means the Navajo Nation.

(g) *New Lands* means the land acquired for the use of relocatees under the authority of Pub. L. 96-305, 25 U.S.C., 640(d)-10. These lands include the 250,000 acres of land acquired by the Navajo and Hopi Indian Relocation Commission and added to the Navajo Reservation, 150,000 acres of private lands previously owned by the Navajo Nation in fee and taken in trust by the United States pursuant to 25 U.S.C. 640d-10 and up to 35,000 acres of land in the State of New Mexico to be acquired and added to the Navajo Reservation.

(h) *Office* means the Office of Navajo and Hopi Indian Relocation.

(i) *Person* means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(j) *State* means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(k) *Tribe* means the Navajo Nation.

§ 700.807 Prohibited Acts.

(a) No person may excavate, remove, damage or otherwise alter or deface any archaeological resource located on the New Lands unless such activity is pursuant to a permit issued under § 700.815 or exempted by § 700.809(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 700.809 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from the New Lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal Land Manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal Land Manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 700.815(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on the New Lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal Land Manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this

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part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by the Navajo Nation or member thereof of any archaeological resource located on the New Lands, except that in the absence of tribal law regulating the excavation or removal of archaeological resources, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal Land Manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 700.811. However, the Federal Land Manager shall insure that provisions of §§ 700.815 and 700.817 have been met by other documented means and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal Land Manager, have been the subject of consideration.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal Land Manager with the concurrence of the Navajo Nation, shall issue a permit, subject to the provisions of §§ 700.809(b)(5), 700.815(a) (3), (4), (5), (6), and (7), 700.817, 700.819, 700.823, 700.825(a), to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating, and/or removing archaeological resources, and

safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal Land Manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of the New Lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on the New Lands any activity related to but believed to fall outside the scope of this part should consult with the Federal Land Manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 700.811 Application for permits and information collection.

(a) Any person may apply to the appropriate Federal Land Manager for a permit to excavate and/or remove archaeological resources from the New Lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, location maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training and experience in accord with the minimal qualifications listed in § 700.815(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on the New Lands, the name of the university, museum, or

other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal Land Manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) Paperwork Reduction Act. The purpose of the information collection under § 700.811 is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the New Lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ 700.813 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal land manager to any Indian tribe shall be sent

to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.

(2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 700.817.

(4) When the Federal land manager determines that a permit applied for under this part must be issued immediately because of an imminent threat or loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Federal Land Manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to

communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 700.815 Issuance of permits.

(a) The Federal land manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of the permit; and

(v) Applicants proposing to engage in historical archaeology should have at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering ar-

chaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the New Lands;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the New Lands, and the proposed work has been agreed to in writing by the Federal Land Manager, pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (a)(3) of this section shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on the New Lands, from the Indian land owner and the Navajo Nation which is the Indian Tribe having jurisdiction.

(6) Evidence is submitted to the Federal Land Manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal Land Manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of applications and the issuance of permits.

§ 700.817 Terms and conditions of permits.

(a) In all permits issued, the Federal Land Manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institution in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal Land Manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal Land Manager shall include in permits issued for archaeological work on the New Lands such terms and conditions as may be requested by the Indian landowner and the Navajo Nation.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal Land Manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal Land Manager, at least annually.

§ 700.819 Suspension and revocation of permits.

(a) *Suspension or revocation for cause.*

(1) The Federal Land Manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or

has violated any prohibition of the Act or § 700.807. The Federal Land Manager shall provide written notice to the permittee of suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal Land Manager may revoke a permit upon assessment of a civil penalty under § 700.831 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Federal Land Manager may suspend or revoke a permit without liability to the United States, its agents, or employees when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal Land Manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

§ 700.821 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal Land Manager pursuant to section 10(b) of the Act and this part.

§ 700.823 Permit reviews and disputes.

(a) Any affected person disputing the decision of the Federal Land Manager with respect to the issuance or denial of a permit, the inclusion of specific terms and conditions in a permit, or the modification, suspension, or revocation or a permit may request the Federal Land Manager to review the disputed decision and may request a conference to discuss the decision and its basis.

(b) Any disputant unsatisfied with the higher level review, and desiring to appeal the decision, pursuant to § 700.821 of this part, should consult with the Federal Land Manager regarding the existence of published appeal

procedures. In the absence of published appeal procedures, the review by the head of the Office will constitute the final decision.

(c) Any affected person may request a review by the Department of Interior Consulting Archaeologist of any professional issues involved in a permitting decision, such as professional qualifications, research design, or other professional archaeological matters. The Departmental Consulting Archaeologist shall make a final professional recommendation to the head of the Office. The head of the Office will consider the recommendation, but may reject it, in whole or in part, for good cause. This request should be in writing and should state the reasons for the request.

§ 700.825 Relationship to section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1996 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal Land Manager from compliance with section 106 where otherwise required.

§ 700.827 Custody of Archaeological resources.

(a) Archaeological resources excavated or removed from the New Lands remain the property of the Navajo Nation.

(b) [Reserved]

§ 700.829 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeological value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtained prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field

work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be for its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damages as a result of a violation or prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following.

- (1) Reconstruction of the archaeological resource;
- (2) Stabilization of the archaeological resource;
- (3) Ground contour reconstruction and surface stabilization;
- (4) Research necessary to carry out reconstruction or stabilization;
- (5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;
- (6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;
- (7) Reinterment of human remains in accordance with Pub. L. 101-601, the Native American Grave Protection and Repatriation Act.
- (8) Preparation of reports relating to any of the above activities.

§ 700.831 Assessment of civil penalties.

(a) The Federal Land Manager may assess a civil penalty against any person who has violated any prohibition contained in § 700.807 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation.* The Federal Land Manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of the proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal Land Manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal Land Manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal Land Manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assess-

ment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief.* The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal Land Manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later.) The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty.* (1) The Federal Land Manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion or informal discussions, whichever is later.

(2) The Federal Land Manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal Land Manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal Land Manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal Land Manager shall determine a penalty amount in accordance with § 700.831.

(f) *Notice of assessment.* The Federal Land Manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include the following in the notice of assessment.

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 700.831 for determining the penalty amount assessed

and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request, as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal Land Manager under paragraph (f) of this section of any offer of mitigation or remission made by the Federal Land Manager.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a U.S. District Court, as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal Land Manager may request the Attorney General to institute a civil action to collect the penalty in a U.S. District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal Land Manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal Land Manager.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 700.833 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Federal Land Manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors.

(i) Agreement by the person being assessed a civil penalty to return to the Federal Land Manager and ultimately to the Navajo Nation archaeological resources removed from the New Lands.

(ii) Agreement by the person being assessed a civil penalty to assist the Federal Land Manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on the New Lands.

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation.

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances.

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) The Federal Land Manager shall consult with and consider the interests of the Navajo Nation prior to proposing to mitigate or remit the penalty.

§ 700.835 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal Land Manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State,

or tribal government who furnish information or render services in the performance of their official duties, and persons who have provided information under § 700.833(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) All civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the Navajo Nation.

§ 700.837 Confidentiality of archaeological resource information.

The Federal Land Manager shall not make available to the public under subchapter II of chapter 5 of title 5 of the United States Code or any other provisions of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(a) The Federal Land Manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469-469c) without risking harm to the archaeological resource or to the site in which it is located.

(b) With the concurrence of the Navajo Nation, the Federal Land Manager shall make information available, when the Governor of any State has submitted to the Federal Land Manager a written request for information concerning the archaeological resources within the requesting Governor's state; provided that the request includes:

(1) The specific archaeological resource or area about which information is sought.

(2) The purpose for which the information is sought; and

(3) The Governor's written commitment to adequately protect the confidentiality of the information.

§ 700.839 Report.

Each Federal Land Manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

§ 700.841 Determination of loss or absence of archaeological interest.

(a) Under certain circumstances, a Federal land manager may determine, pursuant to § 700.805(a)(5) of this part, that certain material remains are not or are no longer of archaeological interest, and therefore not to be considered archaeological resources under this part.

(b) The Federal land manager may make such a determination if he/she finds that the material remains are not capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics.

(c) Prior to making a determination that material remains are not or are no longer archaeological resources, the Federal land manager shall ensure that the following procedures are completed.

(1) A professional archaeological evaluation of material remains and similar materials within the area under consideration shall be completed, consistent with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation and with the 36 CFR parts 60, 63, and 65.

(2) The principal Office archaeologist or, in the absence of a principal Office archaeologist, the Office Consulting Archaeologist, shall establish whether the material remains under consideration contribute to scientific or humanistic understandings of past human behavior, cultural adaptation and related topics. The principal Office archaeologist or the Office Consulting Archaeologist, as appropriate, shall make a recommendation to the Federal land manager concerning these material remains.

(d) The Federal land manager shall make the determination based upon the facts established by and the recommendation of the principal Office archaeologist or the Office Consulting Archaeologist, as appropriate, and shall fully document the basis therefor, including consultation with Indian tribes for determinations regarding sites of religious or cultural importance.

(e) The Federal land manager shall make public notice of the determina-

tion and its limitations, including any permitting requirements, for activities associated with the materials determined not to be archaeological resources for the purposes of this part.

(f) Any interested individual may request in writing that the Office Consulting Archaeologist review any final determination by the Federal land manager that certain remains are not, or are no longer, archaeological resources. Two (2) copies of the request should be sent to the Office Consulting Archaeologist, care of Land Use Manager, Office of Navajo and Hopi Indian Relocation, PO Box KK, Flagstaff, AZ 86002, and should document why the requestor disagrees with the determination of the Federal land manager. The Office Consulting Archaeologist shall review the request, and, if appropriate, shall review the Federal land manager's determination and its supporting documentation. Based upon this review, the Departmental Consulting Archaeologist shall prepare a final professional recommendation, and shall transmit the recommendation and the basis therefor to the head of the bureau for further consideration within 60 days of the receipt of the request.

(g) Any determination made pursuant to this section shall in no way affect the Federal land manager's obligation under other applicable laws or regulations.

§ 700.843 Permitting procedures for Navajo Nation Lands.

(a) Pursuant to the Act and this subpart, the written consent of the Navajo Nation is required. Written consent shall consist of a Navajo Nation permit issued in accordance with the Navajo Nation Code or a resolution of the Navajo Nation Council or delegated committee of that Council.

(b) When Indian tribal lands are involved in an application for a permit or a request for extension or modification of a permit, the consent of the Indian tribal government must be obtained. For Indian allotted lands outside reservation boundaries, consent from only the individual landowner is needed. When multiple-owner allotted lands are involved, consent by more than 50 percent of the ownership interest is

sufficient. For Indian allotted lands within reservation boundaries, consent must be obtained from the Navajo Nation and the individual landowner(s).

(c) The applicant should consult with the Office concerning procedures for obtaining consent from the appropriate Indian tribal authorities and submit the permit application to the Office. The Office shall ensure that consultation with the Navajo Nation or individual Indian landowner regarding terms and conditions of the permit occurs prior to detailed evaluation of the application. Permits shall include terms and conditions requested by the Navajo Nation or Indian landowner pursuant to § 700.817 of this part.

(d) The issuance of a permit under this part does not remove the requirement for any other permit by Indian tribal law.

PART 720—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

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AUTHORITY: 29 U.S.C 794.

SOURCE: 51 FR 22891, 22896, June 23, 1986, unless otherwise noted.

§ 720.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the U.S. Postal Service.

§ 720.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 720.103 Definitions.

For purposes of this part, the term—
Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 720.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 720.104–720.109 [Reserved]

§ 720.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) A description of areas examined and any problems identified, and
- (2) A description of any modifications made.

§ 720.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 720.112–720.129 [Reserved]

§ 720.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination

under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 720.131–720.139 [Reserved]

§ 720.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 720.141–720.148 [Reserved]

§ 720.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 720.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 720.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 720.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens

but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of § 720.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 720.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section by

October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

(e) *Housing*. The agency shall ensure that any dwelling purchased for a relocatee household is readily accessible to and usable by any handicapped person who is a member of that household.

[51 FR 22891, 22896, June 23, 1986, as amended at 51 FR 22892, June 23, 1986]

§ 720.151 Program accessibility: New construction and alterations.

(a) Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established

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in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

(b) The agency shall ensure that any dwelling that is constructed for a relocatee household is designed and constructed so as to be readily accessible to and usable by any handicapped person who is a member of that household.

[51 FR 22891, 22896, June 23, 1986, as amended at 51 FR 22892, June 23, 1986]

§§ 720.152–720.159 [Reserved]

§ 720.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue finan-

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cial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 720.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 720.161–720.169 [Reserved]

§ 720.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Assistant Director for Relocation Operations shall be responsible for coordinating implementation of this section. Complaints may be mailed to Assistant Director for Relocation Operations, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180

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days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be

filed by the complainant within 90 days of receipt from the agency of the letter required by paragraph (g) of this section. The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22891, 22896, June 23, 1986, as amended at 51 FR 22891, June 23, 1986]

PARTS 721-899 [RESERVED]